

16 MARCH 1948

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Tuesday, 16 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are
5 represented by counsel. The Sugamo Prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 Colonel Warren.

10 MR. WARREN: Until the time of the establish-
11 ment of the Opium Control Board, the control of opium,
12 such as it was, may have been handled by various
13 special service organizations of which there apparently
14 were many. TANAKA, in his direct examination
15 a. (T. 15857-15858) stated the names of the ones who made
16 an effort to take away the control of the opium traffic
17 from the various special service organizations and to
18 establish the Opium Control Bureau. None of those
19 named was the accused DOHIHARA. There was absolutely
20 no attempt upon the part of the prosecution to connect
21 DOHIHARA with any such movement. He had nothing to
22 do with it. TANAKA's testimony boils down in substance
23 to the fact that DOHIHARA was the head of the Special
24 Services Organization in Mukden; that there were several
25 a. 15857-15858.

1 special services organizations; and that these or-
2 ganizations were in the control of the opium trade
3 until such time as the Opium Control Board was formed;
4 that the Opium Control Board was put into effect on or
5 about January 11, 1933 but that in his recollection
6 the Opium Control Board up to that time was an organiza-
7 tion in name and not in fact; and that DOHIHARA returned
8 as head of the Mukden Special Services Organization
9 in December 1934.

10 • Regardless of the fact that his testimony
11 is hazy in some respects it is clear on two points.
12 When the Opium Control Board was set up, opium control
13 was removed from the special services organizations and,
14 according to his recollection, DOHIHARA did not return
15 as head of the Mukden Special Services Organization
16 until December 1934, almost a year after the Opium
17 Control Board was put into effect. Actually, opium
18 control was under what was known as the Monopoly
19 Bureau. In order that there can be no confusion on
20 this point as to names, we should again like to refer
21 to the testimony of the witness TANAKA where he out-
22 lines the duties of the Monopoly Bureau and refers to
23 it, as such, in the following terms, "This Monopoly
24 Bureau . . ." ^{a.} (T. 15958).
25 a. T. 15958.

1 We now desire to focus the Tribunal's atten-
2 tion on the testimony of witnesses whose memory, upon
3 the points referred to in the testimony of the witness
4 TANAKA, should be, and is certainly more reliable.
5 The first witness we will refer to is the witness
6 NAMBA, Tsunekazu. This witness was the first Japanese
7 to assume the position of Vice-Director of the Monopoly
8 Bureau, the Director of the Bureau being a Chinese by
9 name of Chiang-en-chin,^{a.} (T. 20309-10). According to
10 this witness, he assumed his duties on January 11,
11 1933. He refers to the proclamation prohibiting the
12 smoking of opium and states that the organization of
13 the Monopoly Bureau and the opium law and the regula-
14 tions governing the enforcement of them was promul-
15 gated in November 1932^{b.} (T. 20310). He further states
16 that in the beginning, the Monopoly Bureau was intended
17 as a general monopoly to handle other products besides
18 opium but that only opium was handled for the first few
19 years^{c.} (T. 20311). He then goes into a more or less
20 detailed dissertation concerning the Bureau and the
21 opium situation which we are not concerned with at
22 this time. However, the testimony of the witness
23 NAMBA, as just discussed, is important for the reason it
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25 a. T. 20309-10.

b. T. 20310.

c. T. 20311.

Does not in any manner conflict with that of the prosecution and only makes more clear the fact that opium control for Manchuria was under the Monopoly Bureau from January 1933. Even from the testimony of TANAKA it is clear that DOHIHARA could have had nothing to do with the opium control question because he states, to the best of his recollection, that DOHIHARA returned as the head of the Special Services Organization of Mukden in December 1934. However, his memory on that point is not far off because actually DOHIHARA returned as head of that organization some time in July 1934. According to the interrogation of the accused himself, he did, some time during the latter part of the month of November 1931, go to Harbin as the head of the Special Services Organization where he remained until March 1932; on the 1st of April 1932 he became Commander of the Ninth Brigade at Hiroshima where he remained until July 1934 at which time he returned to Mukden as head of the Special Services Organization.

a. (T. 15715). It is believed that the recollection of the accused DOHIHARA on this point would be more accurate than the recollection of any other person. However, regardless of which date the Tribunal accepts, and incidentally, in order to be perfectly fair, there a. T. 15715.

is a third date when he is supposed to have returned,
that was December 1933 and came from a defense witness,
any date mentioned would have been at a time after
opium control had been taken over by the Monopoly
Bureau. The third date just mentioned, December 1933,
is taken from the testimony of the defense witness,
AIZAWA, Makoto, (T. 28603). He states among other
things that from April 1933 until March 1936, he was
employed as a civilian by the army and was attached
to the Mukden Army Special Services Organization; that
during his tenure, specifically from December 1933
until March 1936, he served under the accused DOHIHARA.
In his testimony he gives the Tribunal an idea of the
size of the Mukden Special Services Organization because
he states that in addition to DOHIHARA and DOHIHARA's
assistant, there were four clerks kept busy, for the
most part, decoding telegrams which contained matters
for press releases. Concerning the question of opium,
he states, ". . . I can definitely state that at no
time while I was connected with the organization, did
it ever have anything at any time to do with opium.
Of this I am positive." ^{b.} (T. 28606). The statement
of this fact is clear and concise and is not in any

a. T. 28603.

b. T. 28606.

manner inconsistent with the testimony of the prosecution, unsatisfactory as that testimony may be.

There were other times in Manchuria when the accused DOHIHARA was there on business but the analyzation of the testimony with reference to these periods of time in connection with the opium question would be useless and could be of no assistance to the Tribunal. The fact remains that any fair consideration of the testimony can lead only to the ultimate conclusion that DOHIHARA had nothing whatsoever to do with the opium traffic. There can be no doubt on that score.

The prosecution gave some time to what they deem DOHIHARA's activities in North Manchuria and appear to attach great importance to the fact that he was sent to Harbin on 26 January 1932 to take over the office of the Special Services Organization there. They do not say why they attach any importance to it and merely cite the Lytton Report leaving us to draw our own conclusions.^a (Ex. 57, P. 79). The Lytton Report makes it plain that the fighting around Harbin was between two Chinese forces and that there was considerable anxiety for the 4000 Japanese residents and 1600 Koreans who were exposed to the danger of massacre, and that DOHIHARA was sent there in this
^a, Ex. 57, P. 79.

1 emergency. Fighting between the Chinese forces in
2 the immediate neighborhood would have resulted in
3 the retreat to the town of a defeated army, the
4 horrors of which the recent history of China provides
5 so many examples. ^{a.} (T. 57, P. 79, par. 1). So
6 actually, there is a far different picture from that
7 which the prosecution apparently wish to have the
8 Tribunal believe. We earnestly request the Members
9 of the Tribunal to read both the citations of the
10 prosecution and the defense so that there can be no
11 question of the soundness of the position of defense
12 on this matter.

13 The prosecution state as a fact that, as a
14 result of negotiations with DOHIHARA, General MA
15 accepted the position of Minister of War in the
16 puppet government and cite as their authority the
17 testimony of the prosecution witness Powell. Powell's
18 testimony is rank hearsay, based upon newspaper
19 stories, and had his testimony come at a later time in
20 the trial of this case, we feel, in view of subse-
21 quent rulings of the Tribunal, he would not have
22 been permitted to testify in the manner he did. As
23 it was the defense objected to his testimony. However,
24 the President stated that the Tribunal had to take
25 a. Ex. 57, P. 79, par. 1.

1 hearsay, but would take into account that its source
2 was newspapers. ^{a.} (T. 3232). Powell admits that he did
3 not interview DOHIHARA ^{b.} (T. 3323-4). He states
4 frankly that his authority for the statement that
5 General MA was bribed with a million dollars in gold
6 bars was a circular telegram allegedly sent by General
7 MA to all newspapers. ^{c.} (T. 3233). Although Powell
8 states, in substance, that as a result of negotiations
9 with DOHIHARA, MA accepted the position of Minister of
10 War in the Chang-chun government. ^{d.} (T. 3232). He
11 had no personal knowledge but he quoted from memory
12 from the telegram. Later, in commenting upon the con-
13 tents he stated that MA, of course, asserted he was a
14 loyal Chinese citizen and that as a matter of fact MA
15 still is with the National Government and is somewhere
16 in the vicinity of Paotou. ^{e.} (T. 3232-4-5). Since all
17 of Powell's testimony is of the type the defense was
18 not permitted to use and since the prosecution have
19 no other type of evidence on the subject and since no
20 reliability can be placed upon this type of evidence,
21 we see no point in arguing the question further.

23 a. T. 3232.

24 b. T. 3343-4.

c. T. 3233.

25 d. T. 3232.

e. T. 3232-4-5.

We admit the prosecution assertion that
1 General DOHIHARA was promoted to major general on
2 April 11, 1932, but we deny that it had anything to do
3 with the establishment of the puppet state of Manchuria
4 and challenge the prosecution in their answer to this
5 summation to cite their authority.
6

7 THE PRESIDENT: Colonel Warren, I do not like
8 interrupting; I prefer to allow you to make statements
9 which are not in accordance with the facts as we
10 know them. I do not say you make them deliberately.
11 You are saying, in effect, that we wrongly excluded
12 evidence that the defense offered. That is the sum
13 total of what you are saying. You should refrain from
14 making such statements. However, we will allow them
15 to stand, but we will disregard them, of course.

16 MR. WARREN: Your Honor, I never in my life
17 in the summation of a case have ever said anything
18 that I did not feel was justified by the record. I
19 am subject to error; but in this instance I must remind
20 the Tribunal that the Tribunal refused to permit us
21 to bring in newspaper stories, and Powell's testimony
22 was based entirely on newspaper stories; at least,
23 the portions to which we refer with reference to
24 DOHIHARA. If the Tribunal refuses to take into con-
25 sideration the source of his testimony, then I feel

1 that the Tribunal has done an injustice to the defense
2 because we were not permitted to bring in newspaper
3 stories to counteract his testimony.

4 THE PRESIDENT: You are criticizing decisions
5 of the Court on evidence, and you are doing so in the
6 course of your summation. That would not be allowed
7 in any American court or in any British court, and
8 should not be allowed here. In a summation you state
9 the law as you see it, or you make submissions, and
10 you deal with the evidence admitted. You do not
11 criticize the court for its decisions.

12 MR. WARREN: Your Honor chooses to place me
13 in a position which I have not assumed, and I must
14 explain myself.

15 I have previously explained in my summation
16 that there came a time when the Tribunal realized
17 that to accept these things they must continue on
18 for years. I did not criticize the Tribunal; as a
19 matter of fact, I saw nothing else for the Tribunal
20 to do at the time. That is not criticism.

21 THE PRESIDENT: You say the Tribunal admitted
22 a certain type of evidence when it was tendered by
23 the prosecution, but rejected it when it was tendered
24 by the defense. That is criticism.

25 MR. WARREN: Your Honor, if I have criticized

the Tribunal, of course I apologize to the Tribunal.

1 But I wish to point out that your statement just now
2 that certain evidence was introduced on the part of the
3 prosecution that was not permitted on the part of the
4 defense is a true statement, and that is not criticism.

5 THE PRESIDENT: In your opinion it is a
6 true statement, of course.

7 We do not want to deny your right to an
8 opinion. But we do not want to be told what your
9 opinion is here now, in the course of the summation,
10 Colonel Warren.

11 MR. WARREN: Your Honor, I would not know how
12 to make a summation without expressing an opinion from
13 time to time. I will assure you that there is not
14 one word in this that would ever be rejected by any
15 court in which I have appeared. I do not know about
16 your British courts. But certainly I would challenge
17 the ruling of a court in a summation at any time in
18 the United States.

19 THE PRESIDENT: Proceed to read.

20 MR. WARREN: I would like to say this, your
21 Honor, in explanation. I merely wish to make my
22 position plain to the Tribunal. If I have inadvertently
23 said something that would cause a man used to another
24 system of practice than mine to be apprehensive of my
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1 attitude, certainly I do not intend to insult the
2 Tribunal and anything I may have said to that effect
3 is inadvertent; and I wish every Member of the Tribunal
4 to know that.

5 The prosecution next proceed in their sum-
6 mation to what they term DOHIHARA's endeavor in setting
7 up Inner Mongolia Autonomy.^a (Pros. sum. P.P. BB-25.)
8 They make the assertion that early in 1935 MINAMI
9 deemed it proper to enlarge the scope of the Tangku
10 Truce and sent DOHIHARA to negotiate with the Chinese
11 authorities in the Chahar Province. We do not deny
12 that DOHIHARA, who was then on the staff of the Kwantung
13 Army, did carry on some negotiations. However, these
14 negotiations had nothing to do with increasing the
15 scope of the Tangku Truce but came about as a result
16 of a series of border incidents.^b (Tr. 20,754) The
17 reason General DOHIHARA was sent was because those
18 troubles had arisen within the area where he was
19 stationed and he was well versed in the actual facts.
20 Also, his character was best suited for negotiating
21 with the Chinese on such sundry affairs towards
22 settling them in a friendly, peaceful way.^c (T. 20,755)
23 Although the prosecution stated that the result of
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25 a. Pros. Sum. P.P. BB-25.
b. Tr. 20,754.
c. T. 20,755.

the negotiations led to the so-called "Ching-DOHIHARA Agreement," there actually was never any such agreement in existence; that is, if we can believe the prosecution witness General Ching, who is supposed to have made the agreement. He states that there was no so-called "Ching-DOHIHARA Agreement" in existence,^a (Tr. 2336) and then proceeds to verify the defense's position that DOHIHARA was there to settle pending border disputes on a temporary basis. With reference to this he states that with regard to the North Hopei Affair he, Ching, on the order of the Central Government discussed the matter with DOHIHARA with a view to a temporary settlement.^b (Tr. 2337) At this point, in reading the record, one might be confused and believe that there are two Chings; however, a careful study of the entire testimony would disclose that this is probably a result of interpretation. Ching, continuing to testify concerning the same agreement, later made the assertion that the question was temporarily settled.^c (Tr. 2339)

Not only was it temporarily settled but it was settled in a very friendly manner.^d (Tr. 20,756)

- a. (Tr. 2336).
- b. (Tr. 2337).
- c. (Tr. 2339).
- d. (Tr. 20,756).

1 The whole episode had nothing to do with establishing
2 or attempting to establish autonomy in Inner Mongolia.

3 The prosecution then continue in their argu-
4 ment to state that DOHIHARA made a trip to see the
5 Governor of Chahar and that his mission was to promote
6 Inner Mongolian self-government.^a (Pros. Sum. P. B3-21)
7 The citation which they give (Ex. 197, Tr. 2283)^b indi-
8 cates that such might have occurred, but in reading
9 the exhibit it becomes plain that WAKASUGI who for-
10 warded the information to the then Foreign Minister
11 HIROTA was only guessing. He starts his communication
12 out with the admonition that his observations of the
13 recent situation in the area lead him to believe cer-
14 tain things and then proceeds to recount his beliefs
15 as facts. Neither the sender nor the receiver of the
16 cable in question ever considered the communication
17 to contain facts as can be observed by reading the
18 exhibit. It is true that the cable does say that
19 DOHIHARA made such a trip, but the sender of the cable
20 does not presume to state why the trip was made except
21 to forward his own opinion which he, in substance, says
22 was no doubt to promote the Inner Mongolian self-
23 government. If DOHIHARA is to be found guilty of
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25
a. Pros. Sum. P. BB-21.
b. Ex. 197, T. 2283.

1 having made a trip for the purpose advanced by the
2 prosecution such finding will have to be made on guess-
3 work.

4 The prosecution next discuss an alleged agree-
5 ment which they claim was made between DOHIHARA and
6 the Hopei-Chahar Regime, in which it was agreed that
7 Chahar would be placed under the domination of one
8 Prince Teh. In order to substantiate this statement,
9 the direct testimony of the prosecution witness TANAKA
10 is cited.^a (Tr. 2041) However, in reading his testi-
11 mony, we find that the agreement was supposed to have
12 been reached between DOHIHARA and General Chin Teh-chun.
13 We assume that the testimony of General Ching on this
14 matter would have been much more valuable than that of
15 TANAKA, yet the prosecution did not ask General Ching
16 about this matter. We wonder if that could be because
17 Ching himself denied he had any agreement with DOHIHARA?
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a. Tr. 2041.

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We have indicated that DOHIHARA, while well versed in the knowledge of the Chinese people and therefore useful to his superior officers, was not considered by them as competent to handle major problems such as those which the prosecution rely upon to establish conspiracy. No better proof of this statement can be had than the information elicited by the prosecution from the accused MINAMI in their cross-examination. The prosecution asked MINAMI if he sent DOHIHARA to North China to establish the Hopei-Chahar Regime and MINAMI answered that he did not give DOHIHARA such a difficult mission.^{a.} MINAMI apparently did not consider DOHIHARA capable of carrying out any plan of such magnitude otherwise he should never have had any occasion to make the remark, MINAMI's testimony also bears out other evidence as well as the defense contention that DOHIHARA was used only because of his knowledge of China and because of his mild character. He was sent to Peking only for the purpose of talking with General Sung Che-yuan to see whether or not some means to peaceful relations between China and Japan could be found.^{b.} Actually this is the only thing that DOHIHARA had to do with the affairs in North China. We honestly believe that when thorough consideration has been given to all the citations of the

(a. T. 19144.
b. T. 19995.)

1 prosecution that the Tribunal will arrive at the con-
2 clusion that all the other activities ascribed to
3 DOHIHARA is just so much wool gathering. As for instance
4 their reference to the East Hopei Regime which certainly
5 should never be brought into the picture by the prose-
6 cution. The Japanese had nothing to do with the estab-
7 lishment of such regime,^{a.} and the Tribunal could almost
8 take judicial knowledge of that fact. That regime was
9 set up by the Chinese themselves and, although the
10 prosecution's summation could be misconstrued by us, we
11 do not believe that they intended to convey the impres-
12 sion that the East Hopei Regime was instigated by the
13 Japanese.

14 The prosecution next discuss what they consider
15 to be DOHIHARA's role in the conspiracy to estrange
16 North China. They allege that DOHIHARA and his co-
17 conspirators attempted to bring North China under Japa-
18 nese domination.^{b.} They assume the conspiracy but cite
19 no evidence to prove it and instead cite exhibit 210
20 which was introduced over the strenuous objections of,
21 defense counsel.^{c.} The origin of this document is still
22 in doubt but as to what the document actually is there is
23 no doubt. It is a part of a summary of Japanese war

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25 (a. T. 19996.
b. Prosecution summation par. BB-28.
c. T. 2694-2700.)

1 crimes in China from 18 September 1931 to August 13,
2 1937, and is a Chinese document. The information con-
3 tained in it is not authenticated and could not possibly
4 have any more probative value than the Indictment.

5 Now, your Honor, in view of your previous
6 remarks, these next sentences might be construed as
7 criticism, and so I should like to delete them.

8 THE PRESIDENT: That is all right.

9 MR. WARREN: You think that is all right, sir?

10 THE PRESIDENT: You are dealing with probative
11 value.

12 MR. WARREN: All right. I will continue, sir.

13 We are still at a loss as to why it was ever
14 accepted in evidence, but it was, and we ask the Tri-
15 bunal to call to mind the words of the President when he
16 stated that "the representations of the defense would
17 always be kept in mind when we are considering such
18 document or evidence."^{a.}

19 THE PRESIDENT: We have, at times, to admit
20 documents for whatever probative value they may have.

21 MR. WARREN: Yes, sir.

22 The prosecution, by using this document,
23 attempted to prove that the purpose of creating an
24 autonomous regime in North China was to separate the
25 (a. T. 2700.)

1 five northern provinces from the Nanking Government, and
2 then go on to say that in September, 1935, in further-
3 ance of such a plan DOHIHARA went to Peiping to exert
4 his efforts in such behalf.^{b.} However, they do not cite
5 the portion of TANAKA's testimony stating that the name
6 of one of these regimes was the Eastern Hapei Anti-
7 Communist Regime. That name alone indicates the real
8 reason why action was needed. The significance of the
9 name has but become increasingly important as the years
10 roll by. The prosecution concede, however, that little
11 headway, if any, was made and state that DOHIHARA then
12 turned to threats and cited as their authority the
13 testimony of General Ching. We will not discuss his
14 testimony on this point other than to say that it is not
15 in any manner corroborated by any other evidence in the
16 record. We do call to mind however that this General
17 Ching is the same person who testified that the insti-
18 gator in the very beginning of the Japanese aggression
19 in North China was DOHIHARA.^{c.} This statement was made
20 without any supporting evidence whatsoever and on cross-
21 examination repeated efforts were made by counsel to
22 have General Ching name one single fact to bolster his
23 charges. This he could not do.^{d.} Finally, in utter
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25 (b. Prosecution summation par. BB-28.

c. T. 2436.

d. T. 2436-7-8.)

despair, he stated that a mutual friend of his and
1 DOHIHARA's had told him five days before the Mukden
2 Incident occurred that DOHIHARA was going to Manchuria
3 to embark on some big project.^{a.} This conversation was
4 supposed to have taken place in Chungshan Park in Peiping
5 and he finally stated that SHIBAYAMA was the mutual
6 friend who told him the story. Of course, the defense
7 immediately set out to ascertain who this SHIBAYAMA
8 person was and we did learn who he was and found, much
9 to our surprise, that he lived in Tokyo and had already
10 been called in by General Ching before we had an oppor-
11 tunity to talk with him. General Ching had told him
12 that his name had been used before the Tribunal and in
13 what connection it had been used. SHIBAYAMA was sur-
14 prised at the carelessness displayed by General Ching in
15 using his name because he, SHIBAYAMA, knew that he was
16 the only SHIBAYAMA who was a mutual friend of both
17 General Ching and General DOHIHARA.^{b.} It would have been
18 impossible for SHIBAYAMA to have had the conversation
19 with General Ching at the time Ching said he did because
20 he (SHIBAYAMA) was in Tokyo. Furthermore, at no time did
21 he ever mention anything about the Mukden Incident to
22 General Ching much less mention General DOHIHARA's name.^{c.}

24 (a. T. 2438.

25 b. T. 28632.

c. T. 28632.)

1 We assume that if General Ching is so careless in one
2 instance, he certainly would be in another. We cannot
3 give any credence to his testimony and in view of the
4 impeachment we feel we have a perfect right to ask the
5 Tribunal to scrutinize his testimony with extreme care.
6 If SHIBAYAMA had not been telling the truth, it would
7 have been a simple matter for the prosecution to have
8 denied the visit which General Ching arranged with
9 SHIBAYAMA or to otherwise have proven that SHIBAYAMA was
10 not telling the truth. We should have welcomed any such
11 attempt.

12 It is asserted that DOHIHARA announced that if
13 autonomy for North China was not proclaimed, he was pre-
14 pared to send five Japanese divisions into Hopei and six
15 into Shantung and that he fixed an ultimatum to expire
16 at noon the following day which was November 20^a. No
17 citation of authority for this statement is given except
18 a newspaper clipping which, so far as we can ascertain,
19 was never even read into the record. Be that as it may,
20 the prosecution state that the defense witness KUWASHIMA,
21 when presented with Japanese Embassy press telegrams from
22 England and China and from abroad, had to admit that their
23 reports about DOHIHARA's demands and intimidations con-
24 cerning North China autonomy were seen by his bureau and
25 (a. Prosecution summation, par. BB-30.)

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reported to the Foreign Minister or Vice-Minister.

1 Nothing could be further from the truth. We earnestly
2 ask the Tribunal to read the record because at the point
3 cited by the prosecution,^{b.} the question posed to the
4 witness was in substance: "Did not his bureau make and
5 file a large collection of these newspaper reports, both
6 American and British, about what was happening in North
7 China," and the witness answered in substance that he
8 has no recollection of any bureau having made any file
9 of newspaper reports. He does say, however, that he
10 remembers that they did receive many press telegrams from
11 their representatives in Europe and America. So far
12 from the truth is the conclusion of the prosecution on
13 this subject that we will not discuss it further but will
14 renew our request for the Tribunal to read the record.^{c.}

15 Also we will not discuss further the argument of the
16 prosecution with reference to DOHIHARA's activities in
17 North China and North Manchuria. We do earnestly and
18 sincerely request the Tribunal to read every citation
19 made by the prosecution because we believe that therein
20 lies our best defense. We cannot believe that the Tri-
21 bunal could ever draw conclusions so nebulous as the
22 prosecution seems to have reached.
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25 (a. Prosecution summation, pars. BB-30, 31.

b. T. 29540.

c. T. 29539-40-41.)

1 THE PRESIDENT: If it is any comfort to you,
2 Colonel Warren, the Tribunal is checking every statement
3 of fact made in the summations on both sides.

4 MR. WARREN: I thought that, your Honor, and
5 my argument here is just to point out to the Tribunal
6 how strongly we feel that the Tribunal will reach that
7 conclusion, having read that.

8 With reference to the portion of the prosecu-
9 tion's argument which they designate as DOHIHARA's
10 activities after the Marco Polo Bridge Incident,^{a.} there
11 are only two portions which need any answer. For the
12 most part, the prosecution argument merely outlines his
13 career by showing the official positions which he held
14 most of which we do not deny. The main thing we will
15 discuss at this time is the Five Ministers Conference
16 when DOHIHARA was named a member of a special commission
17 on Chinese affairs. In the first place, DOHIHARA was
18 not a member of the Five Ministers Conference, and his
19 selection was undoubtedly made because of his broad
20 knowledge of the Chinese people. The prosecution connect
21 this commission with the so-called Wu project.^{b.} This
22 assumption is wrong. The commission was set up for
23 working out important stratagems which were to be under-
24 stood as political and economical strategies and not
25

(a. Prosecution summation par. BB-33.

b. Prosecution summation par. BB-34.)

a.
directly connected with military operation. The prosecution do not assert that anything more was done than the mere naming of DOHIHARA to this committee. There is no evidence to show that anything further was done or that his services were subsequently used in the project. In the absence of any evidence to the contrary, we can assume this to be true, especially in view of the other circumstances surrounding the transaction which the overall testimony would appear to indicate. This assumption is based upon many passages in the evidence and not any one particular passage, therefore we must ask the Tribunal to draw on its own memory rather than attempt to cite the record. Apparently the prosecution's main objective in referring to the Five Ministers Conference and the naming of DOHIHARA to the committee was to use that fact as a vehicle to connect it with the so-called Wu project. The prosecution seemed to assume the fact that because DOHIHARA was mentioned by the Five Ministers Conference he immediately embarked upon what they term his favorite sport of looking for a puppet leader. If the prosecution had in mind as such puppet leaders Tang Shoa-Ye and Wu Pei-fu, as is indicated, they are certainly mistaken because these two men were the

(a. T. 37362.

b. Prosecution summation par. BB-34.

c. Prosecution summation par. BB-24.)

original founders of the Kuomintang Party which is the

1 Central Government of China.^{a.} This mission, that is
2 the Wu Project, was a project set up for the purpose of
3 settling the war if possible. We take this statement
4 from the interrogatory of General DOHIHARA which the
5 prosecution introduced, and since the prosecution have
6 relied upon his statement as statements of fact, we see
7 no reason why the Tribunal cannot accept them from us.

8 Consequently, we shall not cite any further proof on

9 this fact.^{b.} These plans for bringing about the settle-
10 ment of war, as the prosecution admits, were terminated
11 as the result of the assassination of Tang Shao-Ye.^{c.}

12 The prosecution's statement to the effect that reports
13 to the Foreign and War Ministries on negotiations with
14 Wang Ching-wei and other puppet Chinese leaders were all
15 sent in the name of the DOHIHARA Kikan Agency at Shang-
16 hai, if not thoroughly analyzed is highly misleading.^{d.}

17 In the first place, General DOHIHARA never had any con-
18 nection whatsoever with Wang Ching-wei and we defy the
19 prosecution to cite the record to prove the contrary;
20 and with reference to the DOHIHARA Kikan Agency at
21 Shanghai, the name was merely a holdover, DOHIHARA hav-
22 ing nothing to do with it after May 19, 1939 -- that

23 (a. T. 15716.

24 b. T. 15715-16.

25 c. Prosecution summation par. BB-34.

d. Prosecution summation par. BB-34.)

date did not appear on my errata sheet, sir -- and
1 according to the prosecution's version the agency was
2 established sometime in the spring of 1939.^{a.} The
3 prosecution do cite the testimony of YAMAWAKI^{c.} in an
4 attempt to show that DOHIHARA contacted Mr. Wang Ching-
5 wei, but the witness stated that he did not have any
6 recollection as to whether DOHIHARA contacted Wang Ching-
7 wei or any person purported to be his representative.
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The prosecution must have known that any communication
1 using the name of the DOHIHARA Kikan Agency after
2 May 19, 1939 had no connection with General DOHIHARA,
3 because on that date he was appointed Commander of
4 the 5th Army.* They know that the DOHIHARA Agency
5 and the person DOHIHARA was not one and the same because
6 they indicate that by their questioning of the witness
7 ^{a.} YAMAWAKI. Why their argument is couched in terms
8 which would lead one to believe differently is quite
9 beyond the understanding of the defense and is not
10 justified by the record.
11

12 The prosecution devote two small paragraphs
13 to DOHIHARA's contribution to the Tri-Partite Pact.
14 The only connection that they can give is the fact the
15 Germans gave him a medal or two. The court can take
16 judicial knowledge that the Germans were a people who
17 loved medals and gave medals in order that they
18 could receive medals. DOHIHARA had contributed nothing
19 of which he was conscious to the Tri-Partite Pact and
20 as a matter of fact did not know that he was to receive
21 the medal. The reason given for the presentation of
22 the medal refers to his activities as Inspector General
23 of the Army Air Force and the only reason appearing
24

25 a. T. 30,109-10-11.
* T. 695, Ex. 104; T. 30,330.

1 in the record which can account for him having received
2 it was simply because he was the head of the department.
3 He was surprised, as were his subordinates, when the
4 medal was presented to him and he uttered words of
5 surprise upon receiving it.^a The authority for this
6 last statement is taken from a defense witness but
7 the prosecution did not attempt in any manner to rebut
8 his testimony and it stands in the record without
9 contradiction. We shall not discuss this question
10 any further.

11 In the prosecutions summary of DOHIHARA's part
12 in the Pacific War they state that, at the time the
13 Japanese started the surprise attack on Pearl Harbor,
14 DOHIHARA was the Chief of the Air Inspector General
15 and concurrently Supreme War Councillor. They make
16 much of the fact that he attended a meeting of the
17 Supreme War Council, presided over by TOJO, in which
18 meeting they claim candid views were exchanged regarding
19 the fast-moving international situation and the attitude
20 to be taken by Japan.^b They do not assert that
21 DOHIHARA expressed any opinion whatsoever because he
22 did not.

23 Further mention is made of the fact that
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- 25 a. Ex. 3188, T. 28,746, 28,747.
b. Pros. Sum-P. BB-36

DOHIHARA was the Commanding General of the Eastern Area Army which they claim was apparently directed against the United States and that he was later appointed Commander of the 7th Area Army at Singapore. Also they say that at one time he was Commander of the Area Army embracing the area around Tokyo while concurrently holding the position of Commander of the Eastern Area Army and the position of Supreme War Councillor. None of these facts do we deny. As a matter of fact we have introduced testimony ourselves which would show he held these positions. The prosecution know that there are literally hundreds of persons, not in the dock, who had more to do with the Pacific War than did General DOHIHARA. They also know that were it not for the events which occurred in Manchuria and China DOHIHARA would never have been selected as one of the persons to be tried by this Tribunal.

In the first place the position held by General DOHIHARA at the outbreak of the Pacific War was a position which had no tactical or operational command authority. As a matter of fact DOHIHARA, because of the position held, was precluded from participating in the preparation or planning of any operational or tactical mission.^a The reason that we

a. Ex. 3188, T. 28,743.

1 can state with assurance that the prosecution recognize
2 that he could not have had anything to do with the
3 commencement of the Pacific War is because they did
4 not attempt in any manner to answer the defense
5 testimony on that score. It is unanswerable because
6 it is true. We admit that DOHIHARA was at one time
7 Inspector General of Military Education but in that
8 position he had no authority and, as a matter of
9 practice, took no part in any planning or operational
10 matter and had absolutely no voice in any decision
11 with reference to tactical planning or operations in
12 the field.
b

13 But to return to the date of June 30, 1941,
14 when DOHIHARA, as Supreme War Councillor, attended a
15 meeting which was addressed by General TOJO, the then
16 War Minister. The prosecution rely on a news story
17 for their information and attempted to secure nothing
18 more reliable on the point than this news story.
19 Because of the subsequent attitude of the Tribunal --
20

21 Am I getting in deep water again, sir?

22 THE PRESIDENT: No, go ahead.

23 MR. WARREN (Continued): Because of the
24 subsequent attitude of the Tribunal toward news stories
25 we feel little value will be attached to this particular
b. T. 28,744.

1 piece of evidence but since it is in evidence we must
2 analyze it. The article^{a.} states in substance that
3 General TOJO and other officials explained in detail
4 the fast-changing international situation. Nowhere
5 in this news story is there any reference whatsoever
6 to the Pacific War. It must be borne in mind that
7 the meeting occurred six months before the outbreak of
8 the Pacific War. There is no reason to believe there
9 was any occasion, at that time, to discuss future
10 war plans, if any there were, with the Supreme War
11 Councillors who had no authority anyway. The defense,
12 not being permitted to rely upon newspaper stories,
13 brought in a witness by the name of SANADA who attended
14 the meeting. We assume if we could find a witness who
15 attended this meeting so could the prosecution, and
16 if SANADA's story is not true they could have introduced
17 rebuttal testimony to disprove it. This meeting of
18 the Supreme War Council is the same one referred to in
19 Appendix E. of the Indictment does not mean that it
20 should be given any more significance than any other
21 bit of evidence gleaned from decidedly unreliable
22 sources. The meeting was not even an official one
23 and the Supreme War Council was not called upon to
24 a. T. 16,179.
25

1 make any sort of decision^{a.} The fast-moving
 2 international situation, which the prosecution asserts
 3 was so freely discussed had no reference whatsoever
 4 to the Pacific War. The meeting was held perhaps a
 5 week after the outbreak of hostilities between Germany
 6 and Soviet Russia and the discussion was confined to
 7 the explanation of the international situation created
 8 thereby. There was no discussion at all concerning
 9 the outbreak of a possible war between Japan and the
 10 United States^{b.}

11 We have previously stated that the Councillors,
 12 as members of the Supreme War Council, had no authority
 13 but this statement may have been a slight exaggeration
 14 because they did have the authority, upon certain
 15 occasions, to advise the Emperor on important military
 16 affairs. The Council was actually an advisory board
 17 to the Emperor, but only advised or gave its opinion
 18 upon his request and upon a subject which was drafted
 19 by him. Without the draft by the Emperor of a subject
 20 for consultation there could be no official Supreme
 21 War Council meeting and since no draft was made
 22 preceding the June 30, 1941 meeting, such meeting
 23 was not even official in character^{a.}

- 24
 25 a. Ex. 3187, T. 28,735.
 b. Ex. 3187, T. 28,736.
 a. Ex. 3187, T. 28,735.

We shall not discuss the ~~command respon-~~
sibilities of the various other positions which DOHIHARA
held during the progress of the Pacific War except
insofar as they relate to his responsibility for the
treatment of prisoners of war. If he is to be found
guilty simply because he held command positions, a
situation which we cannot conceive, there is nothing
defense counsel or any other person can do because
we admit, as previously stated, that he held such
positions.

The prosecution have set aside special space
in their argument for what they term DOHIHARA's
responsibility for maltreatment of prisoners of war.
However, under another heading concerning the alleged
activities of DOHIHARA after the Marco Polo Incident,
they accuse him of permitting the bayoneting of seven
Chinese civilians after three days of starvation. We
take it that such a subject should properly come under
the heading of the mistreatment of prisoners of war,
even though in this instance the persons alleged to
have been bayoneted were civilians but we shall
treat with the situation at this time. The prosecution
rely on their Exhibit 348^a a part of which was read
into the record. This document, headed "Affidavit",
a. T. 4646.

1 was made by a person whose identity we are unable to
2 determine accurately because the person who apparently
3 made it refers to the enemy, but the only name that
4 appears which might have been the person who made
5 the affidavit is that of a Japanese attached to the
6 5th Japanese Station.

7 In reading the argument of the prosecution
8 in their reference to this obscure affidavit, one^b
9 would gather the impression that DOHIHARA was present,
10 knew of the full circumstances and permitted the
11 executions to take place. However, the warrant officer
12 who was in charge of the gendarmes who committed the
13 act was stationed at the Hsiang-Tai District, Hopei
14 Province which was never under the command of General
15 DOHIHARA and we defy the prosecution to show that it
16 was. At that time General DOHIHARA was Commander of
17 the 14th Division which had its headquarters or home
18 quarters in Utsunomiya, Japan^a, which fact the
19 prosecution admits.^b

20 At this point, your Honor, I am going to
21 have to submit an additional errata sheet because this
22 can be misconstrued. What I meant was that General
23 DOHIHARA never had under his command the gendarmes
24

- 25 b. Pros. Sum P.BB-33.
a. T. 15,715.
b. Pros. Sum. P.BB-33.

1 and I did not mean by saying "headquarters, Utsunomiya,
2 Japan" that he was in Japan. He actually was in
3 China at that time.

4 The 14th Division never had any gendarmes
5 under its jurisdiction, a fact of course known to the
6 defense; consequently by no conceivable analyzation
7 of the testimony could we have connected DOHIHARA with
8 this particular incident and therefore are in no
9 position to bring the true facts before the Tribunal.
10 Be that as it may, the fact still remains that the
11 onus is on the prosecution to prove the guilt of the
12 accused beyond a reasonable doubt and if DOHIHARA had
13 command jurisdiction over these prisoners of war
14 the prosecution utterly failed to prove it. We realize
15 that the prosecution, in their summation, should be
16 permitted to draw any reasonable inference from the
17 record but we assert in this instance they have gone
18 completely beyond the record. There is not one word
19 of evidence to support their statement that DOHIHARA
20 permitted the Japanese gendarmes to do the acts complained
21 of and putting such a statement in their argument, as
22 a statement of fact, is wholly unwarranted and is not
23 supported by the record. We feel constrained to
24 argue the point a little further on a pure legal basis.
25 The affidavit in question states that these civilians

1 who were supposed to have been killed were under
2 suspicion of being guerillas.^a We submit that as a
3 legal proposition if these people were guerrillas,
4 sniping and fighting the Japanese forces without
5 benefit of a uniform of any nation, they do not
6 come under the protection of the rules of land warfare
7 and from a purely legal standpoint the Japanese had
8 a right to kill them.

9 The prosecution argues that when DOHIHARA
10 was Commander of the Eastern Area Army he had jurisdiction
11 over prisoners of war camps located in the Tokyo area.
12 They mention one of his visits to a camp stating that
13 the conditions of the camp were not improved after
14 his visit.^b It is interesting to note the manner in
15 which the prosecution couch their argument to the
16 effect that the conditions were not improved after
17 his visit but they had a reason for it. Their citation
18 of authority for their statement that DOHIHARA visited
19 the camp is a part of the direct testimony of the witness,
20 Chisholm;^c a former prisoner of war.
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24 a. T. 4646.
25 b. Pros. Sum. P BB-37.
c. T. 14,272

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1 Much of the defense testimony, which we will not cite
2 at this time because it includes many documents and
3 witnesses, tends to show that DOHIHARA was basically
4 opposed to the mistreatment of prisoners, a fact
5 which the prosecution did not attempt to meet in
6 their rebuttal testimony. It would, as a matter of
7 fact, be impossible for them to meet any such proposi-
8 tion because DOHIHARA's attitude, as outlined by the
9 defense witnesses, was an actual existing fact. He
10 did not knowingly permit the mistreatment of prisoners
11 and always issued orders to the contrary and the
12 testimony of the prosecution witness, Chisholm, is
13 unquestionably the best evidence we could have on
14 that score. Chisholm states, in substance, that
15 DOHIHARA did visit the prisoner of war camp but that
16 before all such visits the camp was cleaned very
17 thoroughly from ten to fifteen times^a. No stronger
18 evidence could possibly be obtained to prove that those
19 who were actually responsible for the treatment of
20 prisoners of war were knowingly disobeying the orders
21 of General DOHIHARA, otherwise there would have been
22 absolutely no necessity to clean the camp ten to
23 fifteen times.
24

25 At that time the main function of the Eastern
a. T. 14277-14278.

1 Area Army was the defense of Tokyo and adjacent
2 territories. DOHIHARA had under his direct command
3 several divisions, units, hospitals and other special
4 units; literally hundreds of separate units^{a.} and
5 since there was only a total of some 4,000 prisoners
6 in his command area, it naturally follows that with
7 all the requirements of his job, he would have little
8 time to devote to that question. The fact that he
9 even visited the prisoner of war camps should be a
10 factor in his favor because certainly with all the
11 manifold duties he had there would be no requirement
12 for him to do so, and no legitimate criticism could
13 have been given him for his failure so to do. Actually
14 there was a separate program set up for the handling
15 of prisoners of war and the head of that activity was
16 not under the command of the Commanding General of
17 the Eastern Area Army^{b.} but was under the direct
18 control of the Minister of War. This organization
19 applied to the whole of Japan, but there was in the
20 Tokyo District an area office^{c.} and, while according
21 to the official chain of command the Commander of the
22 Eastern Area Army was responsible for the control and
23 administration of prisoners of war in his territorial
24

25 a. Ex. 3189, T. 28751-28752.

b. T. 28752.

c. T. 28752.

1 jurisdiction, actually this bureau operated to
2 relieve him of administrative responsibility for
3 prisoners of war, permitting the Commander to devote
4 more time to his many other duties.^{a.}

5 DOHIHARA never received a single complaint,
6 either from his superior officers, or his subordinate
7 officers, with reference to mistreatment of prisoners
8 of war while he held the command post in the Tokyo
9 area. He did receive reports on general conditions
10 but they did not refer to mistreatment of prisoners.^{b.}

11 He was interested in the welfare of prisoners and
12 took occasion to visit the camps under his control.
13 On one occasion, learning that a camp was not adequately
14 supplied with skilled medical care, he managed to
15 make arrangements to provide the camp with such care
16 even though many units and detachments of the Japanese
17 Army and many civilian communities were as devoid of
18 medical attention as the prisoner of war camp.^{c.}

19 DOHIHARA had no say whatsoever in the policy
20 with reference to the handling of prisoners of war.
21 Such policies were formulated on higher levels and
22 forwarded to him for compliance.^{d.}

23 As the Tribunal will note, much of the
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25 a. T. 28753.

b. T. 28754.

c. T. 28754.

d. T. 28754-28755.

1 testimony relied upon by us in this phase of our
2 argument is defense testimony which the prosecution
3 had an opportunity to rebut. The mere fact that the
4 prosecution never even attempted to refute the testi-
5 mony in any respect, especially with reference to
6 the policy for the handling of prisoners of war and
7 their control, indicates strongly that the defense
8 made no mistake in its evidence. We ask the Tribunal
9 to recall that not one word of acceptable rebuttal
10 evidence was offered by the prosecution against
11 DOHIHARA and that not one word of rebuttal evidence
12 was introduced.

13 The prosecution in their argument proceed to
14 the time when DOHIHARA was Commander of the 7th Army.
15 They do not list any specific act, or, for that
16 matter, any act concerning the mistreatment of prisoners
17 of war during that period of time, but content them-
18 selves with stating in very broad terms that the
19 testimony of the defense witness FUHA was speculative
20 and base their entire argument against DOHIHARA for
21 mistreatment of prisoners of war upon an attack of the
22 defense evidence. They state that the defense witness
23 FUHA made the statement that at no time was any
24 prisoner of war camp located within the territorial
25 jurisdiction of the 7th Area Army, even under its

control.^{a.} We assume this to be a typographical
error because we do not deny that there were
prisoner of war camps located within the territorial
jurisdiction of the 7th Area Army, but we do state
that such camps were never under the control of the
7th Area Army.^{b.}

Attached to exhibit 3186 is a chart which
clearly demonstrates the command channels with refer-
ence to prisoners of war with relation to the 7th
Area Army. The only responsibility which the
Commander of the 7th Area Army had was that of
security.^{c.} The prosecution make reference to the
fact that they read to the witness FUHA an ordinance
of prisoner of war camps under date of 23 December
1941, which, in substance, stated that such camps
would be administered by a Commander of an army or
Commander of a garrison, under the general super-
vision of the Ministry of War, and they state the
witness merely explained that this provision applied
to the prisoners of war in the Japanese homeland.^{d.}
The statement of FUHA was not any explanation whatso-
ever; it was a plain statement of fact in which he
said, in substance, that those provisions applied to
the prisoners of war camps in the Japanese homeland.

a. Pros. Sum. BB-37.

c. Tr. 28726.

b. Tr. 28725.

d. Pros. Sum. BB-38.

1 Nor did he say, as the prosecution state that he did,
2 "and as far as prisoner of war camps overseas were
3 concerned," (prosecution summation BB-38). He used
4 a much stronger expression and stated "that when
5 prisoner of war camps overseas are considered."^a.
6 He believes that it should be interpreted that the
7 Commander of the Southern Army was the Commander
8 referred to in Article 3.
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a. Tr. 28733.

1 As previously stated, he did not merely ex-
2 plain something; he spoke authoritatively. In any
3 event, if his testimony had been untrue it would have
4 been a very simple matter for the prosecution to secure,
5 as we did, a witness from the 1st Demobilization Office,
6 which is now the official custodian of the Japanese
7 army records. Any official of that organization could
8 testify that the set-up as given by FUHA was an error
9 if in truth it was. Instead of doing that, they con-
10 tent themselves with saying that FUHA's interpreta-
11 tion was purely speculative, and give as their reason
12 the fact that a certain AYABE, Kitsuju, a witness for
13 ITAGAKI, stated that when ITAGAKI was transferred to
14 Singapore from Korea there was a marked improvement in
15 the prisoner-of-war camps. Based on this citation,
16 they state as a positive fact that it is well estab-
17 lished that ITAGAKI, after taking over the command of
18 the 7th Army as successor to DOHIHARA, did assume an
19 active control over the prisoner of war camps, and con-
20 clude therefore that there is not the slightest tinge
21 of truth in the statement of FUHA. The reference which
22 the prosecution give^a has been read carefully by
23 counsel, but in order to get the full picture the
24
25 a. Ex. 3312, tr. 30,218

preceding page and the following page must be read.

1 If this be done, it can be seen that the witness never
2 made any assertion that ITAGAKI assumed control over
3 the prisoner-of-war camps within the territorial juris-
4 diction of his command. It is true that he did make
5 the statement that he had an opportunity to inspect
6 prisoners of war and part of the camp accommodations at
7 Camp Changi in Singapore, and he does state ITAGAKI
8 attempted to give the best treatment possible to
9 prisoners of war. But there is nothing in the testi-
10 mony which would justify the conclusion that ITAGAKI
11 assumed control over prisoner-of-war camps. The
12 prosecution again failed to analyze the testimony,
13 because had they done so they would have taken into
14 consideration the testimony of HAZEYAMA, who also testi-
15 fied on behalf of ITAGAKI. This witness states that
16 the prisoner-of-war camps were under the command of
17 the Commander-in-Chief of the Southern Army and the
18 local army commander had control over them in limited
19 matters, and that the scope of authority of an army
20 commander, as set forth in the regulation, was limited
21 to supply of provisions, guard duties, etc. He goes
22 on further to state that the system of administration
23 of prisoners of war was set forth by the POW's Adminis-
24 tration Bureau in Japan and by the Southern Army^a
25

a. Ex. 3311, tr. 30,197

1 The testimony of this witness was in exact accord with
2 the testimony of the witness FUHA, and a check of the
3 chart heretofore referred to will reveal that the testi-
4 mony, which refutes the assumption of the prosecution,
5 we should like to refer to the direct testimony of Colonel
6 Wild, who testified for the prosecution. He stated
7 that until September 1942 the prisoners of war were
8 under the control of the 25th Army Headquarters, but
9 that in September 1942 they were removed from the
10 control of the 25th Army and put in charge of a special
11 body of officers who belonged specifically and entire-
12 ly to POW Administration, and he states that in Malaya
13 and Sumatra the POW's were grouped together into one
14 POW area under the command of Major General FUKUYE
15 and the POW Administration.^a Further in his testimony,
16 in discussing the question of labor with reference to
17 POW's and as to who had the final choice, he stated,
18 in substance, that ultimately it was the POW Adminis-
19 tration, and no one could be taken out of the camp
20 without its permission.^b Colonel Wild in his testi-
21 mony made several other references of like character
22 which proves that he knew where the authority over the
23 prisoners of war was centered. His testimony corroborates

24 a. Tr. 5389

25 b. Tr. 5391

that of the defense. When TOJO was on the stand for
1 cross-examination, the President of the Tribunal asked
2 him questions concerning the duties and responsibilities
3 as to prisoners of war, civilian internees and mili-
4 tary administration of occupied territory with refer-
5 ence to the Commander-in-Chief of the Southern Army, the
6 Commander-in-Chief of the 7th Army, and the Commanders-
7 in-Chief of the 16th, 25th, 29th, and 37th Army.^a Then
8 the question was asked concerning the 7th Army, TOJO
9 answered that the authority for supervising prisoners
10 of war was vested in the Commander-in-Chief of the
11 Southern General Army.^b To further corroborate the
12 testimony of the defense, we should like to invite the
13 Tribunal's attention to prosecution exhibit 1681.^c
14 This is an affidavit of one NAKATA, Masayuki, a former
15 colonel in the Japanese army. He states, in substance,
16 that he arrived at Batavia on 13 March 1944 as successor
17 to General SAITO and that he was charged with the con-
18 trol of prisoner-of-war camps. He further states that
19 his immediate chief was Field Marshal Count TERAUCHI,
20 whom the Tribunal will remember as Commander-in-Chief
21 of the Southern General Army. This last affidavit is
22 their own testimony and they are bound by it. We

24 a. Tr. 36,804

25 b. Tr. 36,805

c. Tr. 13,486

1 assert that the interpretation given by our witness
2 FUHA was not speculative; on the contrary, the argu-
3 ment of the prosecution is so highly speculative and
4 their conclusions so unsound and so far from the
5 actual evidence that their statement that there was
6 not the slightest tinge of truth in the testimony of
7 FUHA merits no consideration.

8 The only other place where the prosecution
9 attempt to connect DOHIHARA with any atrocity is in
10 their general argument,^a where they refer to the crew
11 of a B-29 having been shot down and that as a result
12 the crew members received severe burns but received
13 no medical treatment. The only reason they attempt to
14 connect DOHIHARA is because they state that the Outram
15 Road Gaol where the fliers were incarcerated was under
16 DOHIHARA's control as Commander of the 7th Area Army.
17 We have already discussed at length and introduced
18 evidence to show that prisoner-of-war camps were not
19 under the control of the 7th Area Army and consequently
20 DOHIHARA should not be held responsible for the treat-
21 ment of prisoners of war, because he had absolutely
22 nothing to do with it. The prosecution do not attempt
23 to show that the situation complained of was ever called
24 a. Pros. sum. p. J-79, par. J-154
25

1 to the attention of General DOHIHARA, and as a matter
2 of fact, we know that it was not; otherwise there would
3 be evidence to that effect.

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 (Whereupon, at 1045, a recess was
7 taken until 1100, after which the proceed-
8 ings were resumed as follows:)

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Warren.

MR. WARREN: In conclusion we should like to
refer the Tribunal to that portion of the prosecution's
general summation dealing with what they term the li-
ability of the defendants.^a It is their contention
that none of the accused have been charged because
of any act committed by him or any statement made by
him in the course of his official duties, pursuant to
an already established policy if those matters were
his only connection with that aggressive policy. It
is interesting to note that the prosecution use the
words "aggressive policy" and we can only assume that
they do so advisedly, realizing that a person carrying
out a policy established by his superiors could not be
found guilty under the terms of the Charter unless
that person, himself, had something to do with the
formulation of the policy in question. In their re-
view of the testimony the prosecution has not shown
one single instance when DOHIHARA ever established, or
had part in the establishment of, a policy of aggres-
sion or, for that matter, any policy having to do with
any course of action to which Japan as a nation had
a. Pros. Sum. P. K-2, Par. K-3.

1 dedicated herself. We stated at the outset that DOHI-
2 HARA was but an instrumentality used by other persons
3 for carrying out whatever plans or schemes as may have
4 already been in existence. If the accused are not
5 responsible for any act committed, or any statement
6 made by them in the course of their official duties,
7 pursuant to established policies, even though they
8 be aggressive policies, then the statement of the
9 prosecution that no man has been charged for such
10 reason is entirely erroneous. We challenge the prose-
11 cution in their rebuttal to show by actual citations
12 of the record that DOHIHARA ever formulated or helped
13 to formulate any one of the policies which the prose-
14 cution had in mind at the time they wrote their summa-
15 tion. In issuing our challenge we have well in mind
16 the fact that the prosecution has already demonstrated
17 their ability to draw conclusions not warranted by the
18 evidence, and it is not this type of argument we are
19 asking for; it is the facts as actually contained in
20 the record. We are confident that such facts do not
21 exist.

22
23 Later, in the same paragraph in their general
24 statement ^a the prosecution assert that DOHIHARA would
25 not have been charged with crimes against China if his
a. Pros. Sum. Page K-2, Par. K-3.

1 only actions had been to carry out military operations
2 pursuant to orders from the General Staff; that he
3 was charged because of his activities in instigating
4 the matter and in bringing about the adoption of the
5 program of aggression. We will take the prosecution
6 at their face value; and, if they mean what they say,
7 and we have no reason to doubt that they do, we ask
8 the Tribunal then to disregard everything they said
9 concerning General DOHIHARA when he was Commander of
10 the Eastern Area Army and of the 7th Area Army, and
11 during the period of time when he was the Commander
12 of the 14th Division in China. In short, we ask the
13 Tribunal to disregard every bit of evidence intro-
14 duced by the prosecution from the day that DOHIHARA
15 became Commander of the 14th Division at Utsonomiya,
16 Japan, until the termination of the war. By their
17 statement, just referred to, the prosecution has re-
18 lieved the Tribunal of the necessity of considering
19 any of the testimony regarding DOHIHARA's so-called
20 activities in the Pacific War. If this last state-
21 ment of ours is not true, then let the prosecution
22 cite one single instance which would remove DOHIHARA
23 from the category of those persons who acted only
24 pursuant to orders, or let them further explain the
25 meaning of their statement so as to include DOHIHARA.

1 The prosecution's remark that DOHIHARA was
2 charged because of his activities in instigating the
3 matter and bringing about the adoption of the program
4 of aggression is not too clear because they do not
5 specifically state what matter they were referring
6 to. However, it is apparent they are speaking about
7 his actions in China, and we have already shown by
8 our summation that DOHIHARA never instigated or formu-
9 lated any policy to which Japan was committed, but
10 always acted under orders. The record is clear on
11 this point. We, therefore, submit that the prosecu-
12 tion in the portion of the general summation just
13 discussed set their own yard-stick for the measurement
14 of those subject to punishment and, having done so,
15 they are bound by it. If this is the criterion by
16 which these men in the dock are to be judged, then not
17 only has the prosecution utterly failed to prove their
18 case, but they should never have charged DOHIHARA in
19 the first place.

20 We have now arrived at the conclusion of our
21 summation and we will probably not appear before the
22 Tribunal on behalf of DOHIHARA again. My client and
23 my colleagues have asked me to convey to the Tribunal
24 their sincere appreciation for the Tribunal's kindly
25 consideration of our problems and for its great patience

1 which it has been able to maintain throughout the long
2 arduous months already consumed in this trial and we
3 thank you most sincerely.

4 THE PRESIDENT: Colonel Warren.

5 MR. WARREN: If the Tribunal please, we will
6 next proceed to the reading of the summation for
7 HIRANUMA.

8 In presenting the individual summation of
9 HIRANUMA, we shall be as brief as possible and will
10 not, for the most part, discuss those phases of his
11 defense which we feel have been adequately covered by
12 the general summations except to mention them in
13 passing; nor will we waste our time in a vain attempt
14 at denial of obviously proven facts.

15 We do not deny that HIRANUMA was at one time
16 President of Kokuhonsha. The purpose, objectives and
17 other allegations by the prosecution with respect to
18 this association^a are of quite a harmless nature.
19 They must prove something more concrete to charge
20 against HIRANUMA than anything in connection with
21 this association, because being a rightist in Japan
22 could mean a hundred different things. In some cases
23 one may bolster the traditional national belief in
24 the divine ancestry of the Emperor while in other
25 a. Pros. Sum., par. EE-5, p. 2

1 cases his main efforts may be directed to combatting
2 communism in the country. There is no offense in
3 such activities and they are not indictable under
4 the Charter of this Tribunal. The various nations
5 of the world, seeking peace, believe at one and the
6 same time that atomic energy is the harbinger of peace
7 or that communism is the sole gospel of peace. As
8 long as these beliefs are not used as a means of
9 aggression or conquest there is no crime and those
10 who believe in them remain immune from punishment.
11 The prosecution omitted to prove what crimes the
12 rightist association Kokuhonsha is supposed to have
13 committed.

14 Yet the prosecution alleges that Kokuhonsha
15 was an instrument used by HIRANUMA for political pur-
16 poses.^a Unless they prove the criminal purposes
17 HIRANUMA pursued in using Kokuhonsha they have no
18 right to charge it against him. The only evidence
19 cited to substantiate the allegation is an entry
20 in the HARADA diary and we submit it is far too
21 vague to justify such a charge. In citing this evi-
22 dence the prosecution says "for example" as if there
23 are many other facts to prove their allegation but
24 we fail to find anything of the kind in the enormous
25

a. Pros. Sum. par EE-6, p. EE-2

1 jumble of their evidence. We hold this simple truth
2 to be self evident, that any citizen of the world of
3 whatever nation has the inalienable and fundamental
4 right to whatever political or religious belief as
5 to him may seem just and proper; that in the exer-
6 cise of those beliefs he commits no sin against his
7 god or offense against mankind; that his peaceful
8 persuasion of his fellow man is no crime and that
9 only does he merit punishment when he shall have by
10 force or coercion attempted to enslave other men to
11 his own ideals -- then, and only then, does he com-
12 mit sin before God and indict himself in the eyes
13 of man.

14 PRIVY COUNCIL

15 The prosecution, in their general summation,
16 discussing the liability of the defendants state
17 that "no man has been charged in this proceeding
18 because of any act committed or any statement made
19 by him in the course of his official duties pursuant
20 to an already established policy if those matters
21 were his only connection with that aggressive policy,"^a
22 and that "to determine whether any defendant had an
23 ultimate duty or responsibility by imposition of law,
24 it is necessary to consider the Japanese political
25 a. Pros. Sum. par. K-3, P. K-2.

1 structure." ^b With respect to the responsibility of
2 the Privy Council the prosecution states that "this
3 body, whose functions are recognized in the consti-
4 tution, had power to deliberate and pass on matters
5 under its jurisdiction according to the constitution,
6 ordinances especially referred to it, drafts of laws
7 and doubtful points relating to the constitution, laws
8 and Imperial ordinances supplementary thereto, Im-
9 perial ordinances under Article 8 and 10, the con-
10 clusion of international treaties, the proclamation
11 of martial law, important Imperial ordinances con-
12 cerning education, those concerning the organization
13 of various branches of administration and all other
14 matters specifically referred to the Council. It is
15 apparent that all important legislation had to re-
16 ceive the sanction of the Privy Council before it
17 could become effective." ^c

18 Since HIRANUMA served as Vice President of
19 the Privy Council from 1926 to 1936 and then as its
20 President until March 1939, it is highly important
21 that we present to the Tribunal the real scope, power
22 and authority of the Privy Council as well as that of
23 its President and Vice-President.
24

25 b. Pros. Sum. par K-11, p. K-11
c. Pros. Sum. par. K-19, p. K-20

1 In their summation the prosecution enumerate
2 the various functions of the Privy Council, as those
3 being defined in the Imperial Ordinance of 1890 and
4 state that "the Privy Council was a body whose ad-
5 vice, under the ordinance defining its powers promul-
6 gated in 1890, was to be solicited by the Emperor on
7 constitutional questions treaties and agreements, and
8 prior to the issuance of Emergency Imperial Ordinances
9 when the Diet was not in session and to the enactment
10 of ordinary legislation to be submitted by the Cabinet
11 to the Diet,"^a and further say that "The Council be-
12 came, however, a Third Chamber with broad supervisory
13 powers over the executive in both foreign and domestic
14 matters, owing no political responsibility to the
15 Diet or the people, yet exerting important influence
16 over the entire affairs of the State. On bills
17 which had been introduced by Diet members and had
18 passed the Diet, it could either approve or dis-
19 approve in toto regarding projects of law which had
20 been submitted to it by the Cabinet before intro-
21 duction in the Diet, it could not only veto but could
22 also freely exercise its amending power."^b
23

24
25 a. Pros. Sum. par. EE-10, p. EE-3

b. Pros. Sum. par. EE-10, p. EE-3,4.

1 The Tribunal's attention is respectfully
2 drawn to a discrepancy between the definition given
3 in the prosecution's general summation and that set
4 forth in the individual summation. In the former
5 it is said that "all important legislation had to
6 receive the sanction of the Privy Council before
7 it could become effective,"^a and in the latter it
8 is stated so as to appear that all the bills of
9 legislation are referred to the Privy Council
10 before they are submitted to the Diet and they
11 allege that the Privy Council became a Third Chamber
12 with broad supervisory powers.^b

13 Apparently the prosecution is under a grave
14 misapprehension regarding the true scope of authority
15 of the Privy Council and have consequently greatly
16 exaggerated and overrated its political importance.
17 The true test is the provisions of the Imperial
18 Ordinance of 1890 which organized the Council and
19 defined its power. Article 6 of the Ordinance pro-
20 vides that:

21 "The Privy Council shall hold deliberations,
22 and present its opinions to the Emperor for his
23 decision on the undermentioned matters:
24

- 25 a. Pros. Sum. par. K-3, p. K-2.
 b. Pros. Sum. par. EE-10, p. EE-3,4.

1 1. Matters which are under the jurisdiction
2 of the Privy Council according to the constitution
3 and the Imperial Household Ordinances and Ordinances
4 that are specially referred to the Privy Council by
5 the Emperor.

6 2. Drafts and doubts with reference to the
7 Articles of the Constitution.

8 3. Laws and Imperial Ordinances incidental
9 to the Constitution.

10 4. Amendment of the organization and the
11 regulation for the conduct of business of the Privy
12 Council.

13 5. Imperial Ordinances as provided for in
14 Articles 8 and 70 of the Constitution.

15 6. Conclusion of international treaties.

16 7. Proclamation of martial law as provided
17 for in Article 14 of the Constitution.

18 8. Important Imperial Ordinances concerning
19 education.

20 9. Important Imperial Ordinances concerning
21 the organization of various branches of administra-
22 tion and other official regulations.

23 10. Imperial Ordinances concerning the
24 causes of honors and amnesty.

25 11. Matters other than those listed in the

1 preceding Numbers and especially referred to the
2 Privy Council by the Emperor.^a

3 There is nothing in the above provision to
4 establish the allegation of the prosecution that
5 "all the important legislation had to receive the
6 sanction of the Privy Council before it became
7 effective."^b The above list of matters which were
8 to be submitted to the Privy Council's deliberation
9 do not include legislation on Industry, National
10 Defense, "ational mobilization or State Finance.
11 Nor does the above provision show that "the ordinary
12 legislative bill is first referred to the Privy
13 Council before it is submitted to the Diet." Those
14 legislative bills which are to be submitted to the
15 Privy Council are very clearly and definitely de-
16 fined. Therefore, unless the prosecution succeeded
17 in proving that such measures were actually taken
18 under consideration by virtue of Article Eleven,
19 which they did not do, their allegations must
20 collapse.
21

22 As to the assertion that the Privy Council
23 became a Third Chamber with broad supervisory powers
24 over the executive branch in both foreign and domestic

25 a. Ex. 83, P. 1; Tr. 505.

b. Pros. Summ. par. KK-19, P. 20

matters there is, needless to say, nothing in provisions of the Ordinance to evidence it. The prosecution in their opening address went still further and alleged that "the Privy Council had frequently opposed the cabinet on policy questions and on several occasions had forced the downfall of cabinets possessing the confidence of the Diet."^a Not only did the prosecution fail to introduce evidence to substantiate their allegation but actually succeeded in proving the opposite, i.e., an example of the cabinet forcing the policy in spite of the opposition of the Privy Council.

b

Exhibit 687 is a record of the Investigation Committee concerning establishment of the Greater East Asia Ministry held in October 1942 at the Privy Council Office. It reveals fully the doubts expressed by several individual Councillors as to the wisdom of the proposed Government plan and there were heated discussions between the opposing Councillors and the Cabinet Ministers. The record proves that finally, despite opposition of the Councillors, the executive branch of the Government refused to amend the bill and forced their policy

a. Tr. 640-641, June 14, 1946

b. Tr. 12,071-12,095, Dec. 5, 1946

1 through. The record of the eighth meeting held on
2 21 October shows that "Chairman SUZUKI proceeded to
3 give an account of his interview with Prime Minister
4 TOJO concerning the negotiations for the amendment
5 of the original proposal agreed upon at the previous
6 Committee meeting. He said that the Prime Minister
7 was firmly determined to adhere to the original pro-
8 posal, and could under no circumstances agree to
9 the amendment, and that the committee, therefore,
10 had no choice but to express its views frankly
11 when reporting the results of the investigation. All
12 committeemen expressed thanks to the chairman and
13 decided to drop the problem."

14 The evidence further shows that on such a
15 vitally important decision as that of initiating
16 war against the United States and Great Britain the
17 advice of the Privy Council was not solicited by
18 the Emperor. The meeting of the Privy Council to
19 deliberate on the Imperial Rescript of December
20 8, 1941 declaring war against the United States and
21 the British Empire was convened after the commence-
22 ment of hostilities at Pearl Harbor.^a Exhibit 1241,^b
23 which is a record of the meeting of the Inquiry
24

25 a. Ex. 1240, Tr. 10,686
b. Ex. 1241, Tr. 10,690

1 Committee of the Privy Council, reveals that at this
2 meeting Councillors met at 7:30 a.m., December 8,
3 1941 (Tokyo Time) and before the President HARA
4 formally opened the meeting, Navy Minister SHIMADA
5 reported on the starting aspect of the war opened
6 against America and England.

7 It is true the witness FUJITA testified to
8 the effect that if the Privy Council withheld its
9 approval from an enactment upon which the approval
10 was required, and if the bill was an important one
11 the bill would either be changed or it (might)
12 cause the resignation of the cabinet. But it is
13 also true that on redirect examination the same
14 witness stated that he did not remember an actual
15 example of it; he framed his answer in this manner:
16 "... it was a hypothetical case."^a Witness FUJITA
17 also testified that it is not accurate to say that
18 the relations of the Privy Council to the State were
19 both executive and legislative and that the Privy
20 Council amended many of the drafts of new laws and
21 ordinances before they are submitted to the Diet.^b

22 If the Privy Council actually was a Third
23 Chamber, with such powers as alleged by the prosecu-
24 tion, why then was it not consulted about the commence-
25 a. Tr. 17,591, 2/28/47 b. Tr. 17,564, 2/28/47

1 ment of war against the United States and Great
2 Britain?

3 Article III of the Regulations for the
4 Conduct of Business of the Privy Council provides
5 that "the Privy Council shall have official connection
6 with the cabinet and the Ministers only, and officially
7 shall not communicate or have any connection whatever
8 with the Imperial Diet or any Japanese subjects."^a

9 The provision speaks for itself. The Privy Council
10 was secluded from the outside world by law. Its only
11 channel of communication was the cabinet and its
12 members. Being placed in such an isolated position
13 it could not or would not be allowed to make inquiries
14 about state affairs submitted to it other than
15 through the restricted official channel even when it
16 deemed such inquiries necessary. How could a body,
17 bound by such a restriction, exercise a vast power of
18 supervision or, for that matter, any power at all over
19 the cabinet or the executive branch of the government?
20

21 What could the Privy Council do? What was
22 the true scope of its power? The answers to these
23 questions can be easily found in evidences produced
24 by both the prosecution and defense if one has a
25 discerning eye.

a. Ex. 83, p.4, Tr. 505, 6/13/46

1 The prosecution rightly states that Article
2 LVI of the old Japanese Constitution provides that
3 advice of the Privy Council is given when it is
4 solicited by the Emperor.^a In other words, unlike
5 the cabinet, it could not submit advice without
6 being asked for it. It is also true that the
7 actual power of decision of what was to be submitted
8 to the Privy Council lay with the Cabinet.^b These
9 legal characteristics of the Privy Council as just
10 stated are the prosecution's version as stated in
11 their opening statement and in which we fully concur.
12 Article VI of the Privy Council Ordinance already
13 referred to provides for matters which were to be
14 submitted to the Privy Council. However, in the
15 practical application of the rule the cabinet had
16 the power to decide what matters were to be submitted
17 and this is the true interpretation of the law.

18 Article VIII of the Privy Council Ordinance
19 provides that "Though the Privy Council is the
20 Emperor's highest resort to counsel, it shall not
21 interfere with the executive."^c The meaning of this
22 provision has been clarified by the testimony of the
23 witness FUJITA to the effect that the Privy Council
24

25 a. Tr. 550, 6/13/46

b. Tr. 551, 6/13/46

c. Tr. 17,516-7, Ex. 83, 2/28/47

1 was never policy forming and could not interfere with
2 legislative and administrative affairs.^a

3 The above cited provisions of the (old)
4 Constitution and the Privy Council Ordinance, to-
5 gether with the above interpretation, form the basic
6 principles underlying the practical working of this
7 Constitutional organ. These principles were very
8 jealously adhered to. Therefore, when advice was
9 sought by the Emperor on matters decided by the
10 cabinet, the Privy Council, in response, submitted
11 its advice in such a manner as not to interfere with
12 the actual policy of the executive Government then
13 in power. For instance, in the case of deliberations
14 on the Protocol between Japan and Manchukuo: even if
15 HIRANUMA, the chairman of the committee which inves-
16 tigated the bill, or any other councillor, doubted the
17 genuineness of the cabinet's statement that Manchukuo
18 became an independent state by virtue of the action
19 of its citizens, none of them could have made inquir-
20 ies or collected information other than through the
21 officially recognized channels of the cabinet or its
22 members.
23

24 The restrictions placed upon them by Article
25 III of the Regulation for the Conduct of Business
a. Tr. 17,563, 2/28/47

1 of the Privy Council precluded it. They even might
2 have had information contrary to the cabinet's pre-
3 sentation of the case but it would have been of no
4 use in the face of the explanation given by the
5 Cabinet Ministers. Therefore, if the executive
6 government had made up its mind to treat Manchukuo
7 as an independent state, the Privy Council could not
8 have interfered with its decision or policy. It did
9 not have possession of lawful means of investigating
10 the true facts and could not question the propriety
11 of the policy. Hence, this is the reason why the
12 Privy Council, after discussions between the Council-
13 lers and Cabinet Ministers, approved the bill unani-
14 mously, as mentioned in the prosecution's summation.^a
15 In this connection we respectfully refer the Tribunal
16 to the testimony of MINAMI, who stated that, "At times
17 the Privy Council expresses its views and advice on
18 government draft of plans, but it does not absolutely
19 oppose the government."^b The Councillors who mis-
20 trusted the policy of the executive government were
21 placed in a position of a judge whose duty it is to
22 administer a law which he believes to be a bad law.
23 Therefore, as far as the actual policy of the execu-
24

25 a. Pros. Sum., par. EE-21, p. EE-7
b. Ir. 20,025, 4/16/47

1 tive government was concerned the position of a
2 Privy Councillor was that of a man acting in the
3 course of his official duties pursuant to an already
4 established policy. According to the prosecution,
5 such a person should not be charged in this trial.^a
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25 a. Pros. Sum., par. K-3, p. 2.

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1 The President, Vice-President or Chairman of
2 the Investigation Committee of the Privy Council were
3 Chairmen of a deliberating body. They were simply
4 men presiding over a conference whose members had
5 equal votes. We submit that no special liability, if
6 any at all, should be imposed upon such men, as might
7 be done in the case of a head of a military force or
8 an administrative office; simply because they held
9 positions higher than ordinary members in the matter
10 of honor or social standing.

11 In the foregoing paragraphs we tried to clari-
12 fy the true scope of authority of the Privy Council
13 and its members. Basing our arguments mainly upon
14 rules of law governing it and now we shall proceed to
15 show the political reasons arising out of constitutional
16 practice of long standing, which prevented the Privy
17 Council from acquiring such vast power as is alleged
18 by the prosecution. The accused TOJO testified, in
19 reply to a question put to him by the Chief of the
20 prosecution, that the war against the United States,
21 Great Britain and the Netherlands was decided in his
22 cabinet; that it might not have been according to the
23 Emperor's will but it was a fact that because of his
24 (TOJO's) advice and that because of the advice given
25 by the High Command the Emperor consented, though

1 reluctantly, to the war.^a

2 The accused KIDO testified, in answer to
3 questions put to him by Mr. Keenan that under the
4 Japanese system a decision made by the cabinet and^b
5 the High Command could not be vetoed by the Emperor.
6 and it was a custom long prevailing in Japan in
7 constitutional practices.^c If such was the position
8 held by the Emperor in the Japanese political structure,
9 built upon a practice and usage long prevailing,
10 where does the Privy Council stand whose duty is to
11 serve the Emperor as his highest resort of counsel?
12 Categorically it would have been impossible for the
13 Privy Council to exercise a power and influence stronger
14 than that of the Emperor over the policy of the Cabinet
15 and the High Command.

16 We submit that the charges against HIRANUMA,
17 made by the prosecution in connection with numerous
18 events occurring during the period of time when
19 HIRANUMA served in the Privy Council, lack adequate
20 legal foundation. For the sake of brevity we shall
21 refrain from giving specific answers to every charge
22 made by the prosecution with respect to decisions of
23 the Privy Council upon the numerous matters submitted
24

25 (a. Tr. 36,780 Jan. 6, 1948
b. Tr. 31,379 Oct. 20, 1947
c. Tr. 37,380 Oct. 20, 1947)

1 that the Manchurian Incident was considered by the
2 Privy Council. However the exhibit they cite reveals
3 that one of the Councillors asked a question regarding
4 "the improper action taken by the young officers of
5 our Army. It is not at all suitable for the maintenance
6 of military discipline to leave the matter of punish-
7 ment ambiguous." To this the War Minister replied
8 that "the question of punishment is still under con-
9 sideration. However, the authorities also deem it
10 important to maintain discipline, so please leave the
11 affair to the Army."^a This is another example show-
12 ing that the Privy Councillors were powerless when
13 confronted with Cabinet Ministers in charge.

14 Also in the prosecution's summation it is
15 alleged that in an Extraordinary Meeting of the Council,
16 on or about 17 December 1931, it was decided that the
17 four provinces of Manchuria should be occupied by
18 Japanese troops and for this purpose a budget request
19 was approved.^b We most emphatically deny the truth
20 of this allegation and in addition point out that the
21 evidence cited by the prosecution in support of it^c
22 is the accused ARAKI's answers to the prosecution
23 interrogations and therefore by the ruling of the
24

25 (a. Tr. 15,767; Ex. 2205A
b. Pros. Sum. par. EE-19, p. EE-6
c. Ex. 188-C, Tr. 2219)

^a Tribunal ^b not competent evidence against HIRANUMA.

1 When this ruling was made the prosecution (by Mr.
2 Higgins) definitely stated that they were offering
3 interrogations of this kind only against the accused
4 who made them. We admit that there was an occasion
5 when the question of expenditures, incidental to the
6 Mukden Incident, was submitted to the Privy Council
7 asking its advice upon the issuance of an emergency
8 Imperial Ordinance, but we contend that there was no
9 occasion in which "it decided that the four provinces
10 of Manchuria should be occupied by Japanese troops."
11 This is an extremely wild allegation made without any
12 evidence to substantiate it.
13

14 The prosecution also state that HIRANUMA
15 represented Japan on the permanent commission set up
16 under the treaty concluded on 31 October 1935 between
17 Japan and the Netherlands, providing for judicial
18 settlement, arbitration and conciliation of all dis-
19 putes between them. ^c We are at a loss to understand
20 why this event should be charged against him.
21

22 In many paragraphs the prosecution enumerates
23 events which have absolutely nothing to do with the
24 Privy Council or HIRANUMA but refer to such things as

25 (a. Ex. 188-C
b. Tr. 16,103-05; 2782-83; 2797-98
c. Pros. Sum. par. EE-41, p. 15)

1 the Japanese Government's statement breaking off
2 negotiations with the (Chinese) National Government;
3 Mr. Stimson's statement and Japanese Foreign Minister's
4 assurance; the fact that Henry Pu-Yi was induced to
5 accept the position of the Regent of Manchukuo; the
6 installation of Henry Pu-Yi as Emperor of Manchukuo;
7 the issuance of the Amau statement and the denunciation
8 of the Washington Naval Treaty; Amau statement and
9 statements of Mr. Hull and Mr. HIROTA regarding the
10 Amau statement; the denunciation of the Washington
11 Naval Treaty by the Japanese Government; the creation
12 of an oil monopoly in Manchukuo; Japan's refusal to
13 accept the fourteen-inch naval gun limitation; Japan's
14 invasion of China on 7 July 1937; the adoption of the
15 first report by the League of Nations on Japan's
16 military operation in China; Japan's refusal to attend
17 the Brussels Conference; the new formula adopted by
18 Japan vis-a-vis China policy. Establishment of the
19 Provisional Chinese Government in Peking; alleged
20 attack by Japan on the territory of Soviet Union at
21 Lake Khasan and Mt. Zaozernaya; and an issuance of the
22 Japanese Government's official statement concerning
23 the future of East Asia.
24

25 It is not difficult to guess the reason why
these events were brought up against the Privy Council

1 and HIRANUMA. The prosecution appear to be of opinion
2 that these events involve foreign relations and
3 diplomacy, and, the prosecution asserting that the
4 Privy Council was a Third Chamber with broad super-
5 visory powers over the executive branch in foreign
6 affairs, they evidently believe that these events are
7 within its purview and therefore HIRANUMA should be
8 held responsible for them. As pointed out there is
9 absolutely no evidence whatever to show that the
10 Privy Council had any such power over the executive
11 branch in state affairs either foreign or domestic.
12 There is not one scintilla of evidence to show that
13 the advice of the Privy Council was ever solicited
14 on the matters above referred to. We submit that the
15 prosecution has failed utterly to establish that the
16 Privy Council was a Third Chamber with broad super-
17 visory power over the executive branch in matters
18 both foreign and domestic and that therefore these
19 matters are not properly chargeable against the
20 Council or HIRANUMA.
21

22 PREMIER

23 The prosecution go to great length in attempting
24 to establish the fact that there were seven conditions
25 precedent to former War Minister ITAGAKI's acceptance
of a portfolio in the HIRANUMA cabinet and conclude

1 their argument by saying that "it is readily seen
2 that HIRANUMA and ITAGAKI, together with the Army
3 Senior Chiefs, made a 'deal' upon the terms of the
4 seven conditions."^a The evidence on which the pros-
5 ecution predicate this allegation is the statement of
6 YAMAWAKI, which even the prosecution admits was flatly
7 contradicted by ITAGAKI.^b

8 Careful perusal of YAMAWAKI's testimony will
9 reveal that YAMAWAKI never admitted, as alleged by
10 the prosecution, that there were seven such conditions
11 precedent to ITAGAKI's acceptance of the post. All
12 he did state was that he had handed to a Mr. SHIONO
13 certain written conditions for ITAGAKI's acceptance,
14 but he did not remember whether the document contained
15 the points suggested by the prosecutor.^c Not only that
16 but he also stated that at the time of the formation
17 of the cabinet he was unable to see HIRANUMA.^d There
18 is no evidence whatever to establish the fact that the
19 document handed to SHIONO ever reached HIRANUMA, much
20 less that its contents did. Exhibit 3303, upon which
21 the prosecution rely is a newspaper article. This
22 article was shown to YAMAWAKI on his cross-examination^e

24 (a. Pros. Sum. par EE-61, p. EE-20

b. Pros. Sum Par. EE-60, p. EE-20

25 c. Tr. 30,119, 6 Oct. 1947

d. Tr. 30,119, 6 Oct. 1947

e. Tr. 30,118; 30,120; Ex. 3303)

1 although it contains what purports to be the conditions
2 of ITAGAKI's acceptance of the post of War Minister,
3 YAMAWAKI did not recall that the conditions outlined
4 in the document he handed to SHIONO were the same as
5 those appearing in the exhibit. With the many rulings
6 of the Tribunal rejecting and questioning magazines and
7 newspaper articles as evidences we submit that the
8 probative value of exhibit 3303 is nil and cannot
9 refute the statement of ITAGAKI.

10 The prosecution's attack on HIRANUMA's
11 speech in the Diet delivered 21 January 1939, in
12 which he is alleged to have stated in relation to the
13 China policy, that "there was no alternative but to
14 exterminate those who persisted in opposition against
15 Japan" is extremely superficial because the wartime
16 political speeches of any man should not be taken
17 literally much less made the basis of criminal prosecu-
18 tion. The ground of guilt, if any, should be sought
19 with deeper insight, coupled with substantial facts
20 of the prevailing conditions which, from a diplomatic
21 standpoint might demand the position assumed. No
22 speech can collapse an enemy country or kill its people
23 and HIRANUMA's real views and intentions vis-a-vis
24 China can best be found in the intimate talk he had
25 on June 10, 1939 with Wang Ching-Wei. His ambitions,

1 as to the solution of the problem is eloquently dis-
2 closed in his confidential talk with Eugene H. Dooman,
3 United States Charge d'Affair in Tokyo, a faithful
4 description of the interview having been transmitted
5 to the United States Secretary of State in an official
6 letter dated 7 June 1939.

7 In Wang Ching-Wei's interview with Premier
8 HIRANUMA on June 10, 1939, HIRANUMA stated as his
9 opinion that the trouble between Japan and China was
10 indeed alarming and that he wanted to take measures
11 to gain peace by some means or another.^a When Wang
12 suggested three different ways to regain peace and
13 asked HIRANUMA which of these three ways Japan would
14 take HIRANUMA answered that such was a problem of China
15 and that there was no way except to take the measures
16 which China felt to be most proper.^b In the official
17 dispatch to the United States Secretary of State, sent
18 by Mr. Dooman on 7 June 1939, it is disclosed that
19 HIRANUMA told Dooman that^c "the United States and Japan
20 were the only powers which could help to prevent the
21 crystallization of the trend toward the division of
22 Europe into armed camps. There can, however, be no
23 confident hope that a permanent peace can be established
24

25 (a. Tr. 22,262; 15 May 1947
b. Tr. 22,263; 15 May 1947
c. Tr. 29,218; Ex. 3225)

1 until the world-wide economic and political conditions
2 which bring about unrest in Europe and in the Far East
3 can be corrected; and if an international conference
4 can be called to solve the problem which create unrest,
5 Japan would be prepared to agree to the inclusion of
6 the Far Eastern situation among the problems to be
7 discussed. Before any call for such a conference could
8 be issued, Great Britain and France, and Germany and
9 Italy, would have to be sounded out. If the President
10 were prepared to make a confidential approach to the
11 European democracies he (HIRANUMA) would be glad to
12 approach Germany and Italy; and if there returned
13 favorable replies by these nations, he would be glad
14 to have the President call the conference under such
15 conditions as might be agreed upon after discussion
16 through normal diplomatic channels.
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(S. Tr. 29,227-8)

1 It is alleged (EE-66) that the adoption, on
2 January 17, 1939, of a plan for the expansion of pro-
3 ductive power, prepared by the Cabinet Planning Board,
4 was a step taken in preparation of an aggressive war
5 and the prosecution appear to give it great signifi-
6 ^{a.}cance. In their general summation the prosecution
7 state that "the basic plan submitted by the War Minis-
8 try in June 1937, to the various ministries was ulti-
9 mately embodied in Plan IV, the Outline of a Plan for
10 the Expansion of Productive Power, prepared by the
11 Cabinet Planning Board and approved by the Cabinet
12 in January 1939. The preamble outlining the object
13 and policy was in practically the same terms as that
14 in Plan II although the plans differed somewhat in
15 ^{b.}detail." We do not deny that the origin of the plan
16 for the expansion of productive power which was approved
17 by the HIRANUMA Cabinet is a plan which was submitted
18 to the cabinet by the War Ministry in 1937 and that
19 the plan contemplated the year 1941 as the year for
20 the completion of the program. However, the point we
21 desire to stress is that in May and June of 1937 the
22 War Ministry drafted three plans which were referred
23 to in the prosecution's General Summation as Plans I,
24
25 (a. Pros. Summation para. EE-66, p. EE-23)
(b. Pros. Summation para. F-5, p. F-5)

1 ^{a.}
 2 II and III. However, the plan adopted by the HIRANUMA
 3 Cabinet is only one of them and is the one designated
 4 as Plan I. The prosecution allege that the three
 5 plans are inseparable and treats them as such and
 6 therefore accuse the HIRANUMA Cabinet with preparations
 7 for aggressive war.

8 However, let us discuss these plans separately
 9 and see whether the prosecution's argument is well
 10 grounded in the evidence. Plan I, is entitled "Essen-
 11 tials of Five Year Program of Important Industries,"
 12 prepared by War Ministry, dated 29 May 1937;^{b.} Plan II
 13 is entitled "Resume of Policy Relating to Execution of
 14 Essentials of Five Year Program of Important Industries,"
 15 trial draft prepared by the army dated 10 June 1937
 16 and dealt with the materials required by Plan I;^{c.}
 17 Plan III is entitled an "Outline of the Five Year Plan
 18 for the Production of War Materials" and was formulated
 19 by the War Ministry on 23 June 1938.^{d.}

20 According to witness OKADA, Kikuseburo, it is
 21 quite clear that Plan I was submitted to the cabinet
 22 29 May 1937 on or about the day it was formulated.^{e.}
 23 Plan II was tentative and was not officially submitted

- 24 (a. Pros. Summation para. F-2-3-4, pp. F-2-3-4*
 25 (b. T. 8269, Ex. 842)
 (c. T. 8269, Ex. 842)
 (d. T. 8260, Ex. 841)
 (e. T. 18309, 13 March 1947)

1 to the cabinet and its purpose was for reference in
 2 connection with Plan I;^{a.} and it was Plan I which became
 3 the basis of the plan formulated by the Planning Board
 4 of the HIRANUMA Cabinet in 1939.^{b.}

5 The fact that the Plan III was never sub-
 6 mitted to the cabinet is evidenced not only by the
 7 testimony of witness OKADA^{c.} and was not said to have
 8 been by the prosecution witness Liebert.^{d.} The document
 9 containing Plan III is marked at the top "Military
 10 Secret"^{e.} and was found in the archives of the War Office.^{f.}
 11 Witness OKADA pointed out that paragraph 4 of Plan III
 12 which read in part "this outline shall depend firstly
 13 on the basis of fixed war budget"^{g.} meant that the plan
 14 was based on the amount of the budget which the army
 15 expected to be able to secure during the years 1937
 16 through 1943.^{h.} He further stated that two weeks after
 17 June 23, when War Minister SUGIYAMA's approval was
 18 given, the Lukuchiao Incident suddenly broke out on
 19 July 7, and that Plan III was impossible to carry out
 20 in detail.^{i.}

- 22 (a. T. 18309-10-11)
 23 (b. T. 18310: 13 March 1947)
 24 (c. T. 18310-11)
 25 (d. T. 8584)
 (e. T. 18283)
 (f. T. 8584)
 (g. T. 18325; 18285)
 (h. T. 18284)
 (i. T. 18283)

OKADA also testified that Plan III died a natural death because of the sudden outbreak of the China Incident.^{a.} The prosecution, ignoring this testimony, part of which was given by its own witness Liebert, and giving no regard to the fact that Plan III was never taken up by the cabinet, proceed to state that "if there could be any doubt that the two previous plans were aimed at mobilizing Japan for war, it was dispelled by Plan III.^{b.} They further allege that these three plans are inseparably interrelated and therefore all of them are Japan's preparation for an aggressive war.^{c.}

However, for the purpose of the individual defense of HIRANUMA it will be sufficient to point out that Plan III was never submitted to the cabinet and was therefore unknown to HIRANUMA. We can rely on this issue on the above references to the testimony of Liebert and OKADA. Assuming that in the minds of the planners in the War Ministry in 1937, these three plans were created as interrelated plans; this fact was not made known to the HIRANUMA Cabinet of 1939; they knew nothing of the Plan III and Plan I is in itself a self-sufficient program and would arouse no

(a. T. 18278)

(b. Pros. Summation para. F-4 p-4)

(c. Pros. Summation F-6, p-6)

1 suspicion of additional plans. We submit that the
2 prosecution's theory to the effect that the plan
3 adopted by the HIRANUMA Cabinet in 1939 included within
4 its scope the third plan drafted by the War Ministry
5 on 23 June 1937 and their further theory that the
6 plan adopted by the HIRANUMA Cabinet embraced the sub-
7 stance of the three plans drafted by the War Ministry
8 is wholly untenable.^{a.}

9 The prosecution is apparently of the opinion
10 that the War Ministry Plan I, of 1937, upon which
11 the plan of the HIRANUMA Cabinet was predicated,
12 standing alone, still is of an aggressive nature. We
13 submit that such a conclusion has no basis in fact
14 and the whole of the evidence precludes such an inter-
15 pretation. OKADA testified that exhibit 841 (Plan III)
16 is entirely concerned with the military and that exhibit
17 842 (Plan I) while it has a good deal of military as-
18 pects in it is essentially a plan for the establishment
19 of a peace time economy and that at such time Japan^{b.}
20 was in a position where she had to beware of, and to
21 take measures to cope with the phenomenal expansion
22 in the military power of Soviet Russia;^{c.} and that in
23 drawing up her plans she kept in mind the Soviet's
24

25 (a. Pros. Summation para. EE-67, p. EE-23)

(b. T. 18273)

(c. T. 18273)

third five year plan, i.e., the termination period
of the third five year plan.^{a.} In paragraph C of "the
Basic Policy" of the Plan approved by the HIRANUMA
Cabinet it is stated that "this plan aims at the es-
tablishment of self-sufficiency in regard to important
resources within the sphere of our influence and there-
by avoid depending on the resources of a third power as
far as possible even in time of emergency."^{b.}

OKADA pointed out that the part of exhibit
842 (Plan I) wherein it is stated "try not to depend
as much as possible on outside supplies" meant that
even in war time it was expected that the import of
necessary war materials would be continued, but Japan
should avoid depending on import as much as possible,
and, at that time, Japan relied, and would have to
continue to rely, for its supply of these materials on
the Anglo-Saxon bloc.^{c.} This indicates clearly that
the Plan did not contemplate a war with the United
States and Britain. Witness Liebert, in the opening
paragraph of his survey states that "Preparation for
war is disclosed in great measure by direct examination
of the trends of raw material supply and industrial
production. Enormous amount of equipment of various

(a. T. 18277)

(b. T. 8270)

(c. T. 18325)

sorts are necessary to the conduct of modern warfare.^{e.}"

1 This seems to indicate that he is of the opinion that
2 the purport of the provisions of the plans under dis-
3 cussion are war preparation plans. However, on cross-
4 examination he admitted that he could not recall any
5 words in any of the documents which he had presented
6 to show that the plan was for preparation for war
7 against America.^{b.} He also admitted that he was not
8 familiar with the details of the Soviet Plan and that^{c.}
9 he had not studied the increase of industry in coun-
10 tries other than Japan.^{d.} He further said that he did
11 not recall that he ever stated that this plan was in
12 preparation for aggressive warfare.^{e.}

14 THE PRESIDENT: Well, you are coming to a new
15 paragraph. We will adjourn until half past one.

16 (Whereupon, at 1200, a recess was
17 taken.)
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22 (a. T. 8260)
23 (b. T. 8660)
24 (c. T. 8659)
25 (d. T. 8574)
(e. T. 8769)

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the Tribunal please, the following language correction is submitted:

Exhibit No. 3367-A. Delete lines 28-33 and substitute:

"As regards the subject of your inquiry in "JO"-3, Secret No. 692. Since it is the Imperial policy not to permit visits by agents of the protecting power of enemy countries to prisoners of war and to internees in occupied areas, and the adjoining operational areas, reply should be made accordingly to the Swiss Minister."

THE PRESIDENT: Colonel Warren.

MR. WARREN: In the face of the evidence of both the prosecution and defense, the contention of the prosecution that Plan I of 1937, and the HIRANUMA cabinet plan of 1939 was a preparation for aggressive war is wholly untenable and not supported by the evidence. The prosecution appear to believe that the gap

1 in its reasoning, caused by absence of evidence, can
2 be bridged over by the fact that Japan did wage war
3 against the United States and Great Britain in 1941.
4 We have pointed out that Liebert testified that he
5 could not recall the words to show that the plan was
6 for preparation of war against America but he quali-
7 fies his testimony by saying, "I have tried to point
8 out a general preparation for war and I can only --
9 I only know what happened as a matter of history." a.
10 He appeared to be completely bewildered and it is plain
11 that the witness was attempting to rationalize his
12 testimony. We have, of course, repeated assurances
13 by the Tribunal that it will never allow Liebert's
14 testimony to encroach upon the scope of its own province
15 but we are greatly concerned with the prosecution's
16 reasoning that lack of evidence upon which to judge
17 the state of mind of an accused in 1939 can be compen-
18 sated for by occurrences in 1941, especially as in the
19 case of HIRANUMA who was in the government in the
20 former year but not in the latter.

21
22 An outstanding example of the rationalization
23 of the evidence by the prosecution appears in its
24 general summation. They state in substance that
25 "OKADA," however, did state that the plan was prompted
a. T. 8660.

1 by fear of Russia."^{a.} but that "it is still more
2 noteworthy that when the time came to attack, Japan
3 did not attack the Soviet, but continued her aggres-
4 sion in China and attacked Britain and the United
5 States, the two major obstacles to the fulfilment
6 of her objectives in China and the South Seas,"^{b.}
7 and that "it is quite impossible to see how the fact
8 that the objectives of a plan fail to be achieved can
9 change a warlike plan into a peaceful one."^{c.} This
10 kind of reasoning is wrong and it does not serve to
11 establish the allegations of the prosecution. The
12 fact that Japan did not wage war against Soviet Russia
13 is no test as to whether the plan in question was or
14 was not directed to the defense of possible attack
15 from Russia. The fact that Japan waged war against
16 the United States and Great Britain and utilized cer-
17 tain preparations made under a plan does not make that
18 plan, if it were originally prepared for other pur-
19 poses, a plan of aggression against United States and
20 Great Britain. Unless the original planners had a
21 guilty knowledge of any intended subsequent diversion
22 of the plan to other uses they would not be bound. It
23 cannot be said that the manufacturer of a sporting gun
24

25 a. Pros. Sum. par. F-7, p. F-7.

b. Pros. Sum. par. F-7, p. F-8.

c. Pros. Sum. par. F-8, p. F-9.

1 could be held for murder simply because a subsequent
2 owner used it for that purpose. Of course the fact
3 that the objective of a plan failed to be achieved
4 could not change a warlike plan into a peaceful one,
5 but can the outbreak of war years later change a
6 peaceful plan into a warlike one? The prosecution
7 accuse us of talking "outright nonsense,"^{a.} but we
8 still insist that the only question is whether or not
9 there is evidence to show that the program approved
10 by the HIRANUMA Cabinet in 1939, taken as it was, was
11 a preparation for an aggressive war. We submit that
12 there is no such evidence and prosecution's view in
13 attempting to rationalize the issue is outright non-
14 sense.
15

16 The prosecution in addition to the plan for
17 important industries adopted by the HIRANUMA Cabinet
18 refer to the following events and alleges they are all
19 preparations for aggressive warfare in line with the
20 plan discussed in foregoing paragraphs.

- 21 1. Organization of national policy companies.
- 22 2. Compulsory purchases of gold.
- 23 3. Promulgation of the Shipbuilding Industry
- 24 Law.

25 a. Pros. Sum. par. F-8, p. F-10.

1 4. Issuance of an Ordinance concerning the
2 Plan by the Promoter of a business.

3 5. Promulgation of the Coal Sales Control
4 Regulations.

5 6. The increase of military and navy budget.

6 7. Increase of standing army.

7 8. Institution of compulsory youth training
8 school.^{a.}

9 It may be right to say that some of these
10 plans were put into force for the purpose of meeting
11 demands arising out of the China Incident but it is
12 quite wrong to assert they were preparations for an
13 aggressive war against the United States and Great
14 Britain. Any argument in answer to these charges
15 would be similar to that presented in dealing with
16 the plan for the expansion of the important industries
17 and we will therefore not argue these particular
18 charges further.
19

20 The most important problem which HIRANUMA
21 had to deal with as Premier was the question of in-
22 tensifying the Axis relationship. The negotiation
23 for strengthening the relation between Japan and
24 Germany was first suggested by Germany in January
25

a. Pros. Sum. pars. EE-72 through EE-78;
par. EE-81.

1 1938.^{a.} It was terminated near the end of the
2 HIRANUMA Cabinet without fruitful results.^{b.} Never-
3 theless, the prosecution take the view that it was,
4 on the part of Japan, a preparation for the Pacific
5 war and that it was a part of the conspiracy between
6 Japan and the European Axis Powers to dominate the
7 world. We shall first point out that Japan, taken
8 as a whole, or as a country represented by the
9 HIRANUMA Cabinet, never during that period had a
10 relationship with the Axis Powers which could be
11 called conspiracy. Actually, the relation between
12 Japan and the Axis Powers was not that of co-conspira-
13 tors but on the contrary was a relationship full of
14 mutual mistrust and actual betrayal on Germany's part.
15 Next, we will refer to the discord between the political
16 factions in Japan, one favoring Axis Alliance and the
17 other opposing it; at the same time we will make
18 reference to the attitude of HIRANUMA. Finally, we
19 shall briefly deal with the question of the relations
20 between the Axis Powers after the termination of the
21 negotiations.
22

23 The alliance which Germany desired to con-
24 clude was an all-out military pact against the world
25

a. Ex. 497, T. 6051-2.
b. Ex. 2744, T. 24401.

1 whereas the only alliance which the HIRANUMA Cabinet
2 was willing to conclude was one mainly directed against
3 the Soviet Union. As a result there was a serious
4 rift between the intentions of both countries which is
5 very clearly demonstrated by the testimony of the
6 witness KAWABE,^{a.} and in exhibit 502, which is a
7 telegram from Ribbentrop to the German Ambassador in
8 Tokyo dated 26 April 1939.^{b.} According to the witness
9 Stahmer, Japan "towards the end of 1938 and especially
10 after the change of the Japanese Cabinet from KONOYE
11 to HIRANUMA early in 1939, Japan was slowing down the
12 negotiations and Germany got the impression that the
13 administration in Japan was not seriously interested
14 in a closer relation with Germany and Italy."^{c.}

15 An entry in the Ciano diary dated 6 March
16 1939 reads "News from Berlin confirms that the
17 Japanese Government objects to the signing of a
18 Tripartite Pact. . . Is it really possible to involve
19 distant Japan deeply in European political life which
20 is becoming increasingly complicated and uncertain and
21 which is subject to change from one moment to the next
22 by a simple telephone call."^{d.} In an entry on the

24 a. T. 33775-6-8-9.

25 b. T. 6100.

 c. T. 24398.

 d. T. 6096, Ex. 501.

1 following day it is stated that, ". . . The delay and
2 the entire Japanese procedure make me very skeptical
3 of the possibility of an effective collaboration of
4 Fascist and Nazi dynamism with the phlegmatic slow-
5 ness of the Japanese."^{a.} Other evidence to show that
6 there existed mutual distrust between the two coun-
7 tries is a passage in an article written by SHIRATORI.
8 In this article entitled "The European War and the
9 Attitude of Japan," SHIRATORI states, ". . . Before
10 I went abroad, I observed, a rather widespread feeling
11 among the people that it would, therefore, be well
12 if this Anti-Comintern relationship were further
13 developed into a military alliance. . . Japan, however,
14 seemed to be for the settlement of the China Incident
15 by cooperating with Britain. Such being the attitude
16 of Japan, Germany and Italy began to mistrust Japan
17 on this point and, finally giving up Japan went as
18 far as the Russo-German Nonaggression Pact. . . I can
19 affirm here the indisputable fact Japan also was
20 perhaps responsible and should indulge in intro-
21 spection for the course which led to conclusion of
22 the Russian German Nonaggression Pact."^{b.}

24 Exhibit 3226, an affidavit of Major-General

25 a. T. 6097, Ex. 501.
b. T. 16037, 16038.

1 Piggott of the British Army, reveals how HIRANUMA in
2 June 1939 succeeded in solving the Tientsin Incident
3 to the satisfaction of the British Government and the
4 Japanese Army.^{a.}

5 This success of HIRANUMA in restoring a
6 cordial relation between Japan and Great Britain and
7 his proposal made to the United States Government
8 through the Charge d'Affaires of the United States
9 Embassy in Tokyo urging cooperation between Japan
10 and the United States to prevent the division of
11 Europe into armed camps and at the same time offering
12 to submit to an international conference the conflict
13 between Japan and China^{b.} are two outstanding events
14 which disclose the policy of HIRANUMA towards the
15 United States and Great Britain. We submit that the
16 attitude of Japan which led Germany and Italy to mis-
17 trust her, as stated by SHIRATORI, and drove Germany to
18 side with Russia was an attitude taken by HIRANUMA.
19 Witness Stahner testified that "The negotiations were
20 completely broken off when the nonaggression pact
21 between Germany and Soviet Russia was concluded on
22 23 August 1939. The German-Russian negotiation result-
23 ing in this pact was kept secret from the Japanese."^{c.}

- 24
25 a. T. 29233.
b. T. 29227.
c. T. 24401.

1 The evidence shows that from the beginning
2 of the Japan-German negotiations under the HIRANUMA
3 Cabinet the intentions of the two governments were
4 fundamentally divergent and the Japanese Government as
5 represented by the HIRANUMA Cabinet was not trusted
6 by either Germany or Italy and that Germany simultan-
7 eously had been secretly conducting negotiations with
8 the Soviet Union which finally resulted in concluding
9 the nonaggression pact which caused the downfall of
10 the HIRANUMA Cabinet.
11

12 The fact that there existed conflict of opinion
13 in the HIRANUMA Cabinet as to the advisability of Japan's
14 entering into an alliance of the type proposed by Ger-
15 many is fully admitted by the prosecution.^{a.}

16 As to the attitude of HIRANUMA to the con-
17 flicting factions it is noteworthy that the prosecu-
18 tion in their reply to the defense motion to dismiss
19 the Indictment stated that "He seems to have wanted
20 the alliance to be directed mainly against Russia"^{b.}
21 and in their general summation refer to others of the
22 accused as the champions of the faction favoring mili-
23 tary alliance.^{c.} Extracts from the HARADA diary were
24 introduced in an attempt to establish HIRANUMA's
25

a. Pros. Sum. par. EE-86, EE-29.

b. T. 16842, 30 Jan. 1947.

c. Pros. Sum. par. F-124, p. 117.

1 intentions but we submit that his true intention is
2 best disclosed in his talk to Eugene Dooman, a fair
3 description of which was transmitted in an official
4 letter to the United States Secretary of State on
5 6 June 1939 and reads in part as follows: "Baron
6 HIRANUMA said that the belief was widely held abroad
7 that Japan was considering a military alliance with
8 Germany and Italy. He had endeavored to explain frankly
9 the basis of Japanese sympathy for Germany and Italy,
10 and he could say quite definitely that the basis of
11 what appeared to be a concerting of Japanese policy
12 with that of Germany and Italy lay in the fact that
13 all three countries were in the same economic strategic
14 position. He personally was of the opinion that Japan,
15 whose government would for all time to come rest on
16 the sanctity of the Imperial Family, could not tie
17 itself by special relations to any foreign government
18 whose stability depended on the continued existence
19 and political prestige of one individual."^a

21 The prosecution made a remark to the effect
22 that the negotiations for the military pact were
23 conducted through military channels, and that the
24 Japanese Army was strong enough to enforce its will
25 upon the Japanese Government^b and OSHIMA in his

a. T.29226; 24 Sept. 1947; b. T.5916; 19 Sept. 1946.

1 interrogation states, ". . . the army (Japanese) had
2 enough power to very probably sell the pact to the
3 Japanese Government. . . I would say that no treaty
4 could possibly have been made on this if the army had
5 not wished it." ^{a.}

6 We submit that the attitude of HIRANUMA is
7 most eloquently expressed by the fact that in spite
8 of the pressure of Germany and of the pro-German
9 faction in Japan the HIRANUMA Cabinet still did not
10 approve an alliance of the type urged by them even
11 after constant deliberation throughout the lifetime of
12 the cabinet and in more than seventy sessions of the
13 Five Ministers' Conference where it was discussed. ^{b.}

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25 a. T. 5918.

b. Pros. Sum. par. EE-87, p. 29.

1 The prosecution's interpretation of the
2 HIRANUMA message of 4 May 1939 is, in our submission,
3 erroneous. The prosecution describe it as "an
4 acceptance of an unlimited alliance with certain reser-
5 vations."^c

6 But, those certain reservations as admitted
7 by the prosecution are stated as follows: " * * * how-
8 ever Japan is, in view of the situation in which it
9 now finds itself, neither presently nor in the near
10 future able to extend to them in a practical manner
11 any effective military aid."^d

12 This certainly would be a big loophole in an
13 agreement for unlimited alliance and it must have been
14 very clear to the astute German politicians that any
15 military aid promised by Japan thereunder was nothing
16 but lip service. No wonder they hastened to conclude
17 a non-aggression pact with Soviet Russia.

18 The prosecution allege that even after the
19 termination of the negotiations, the pro-German faction
20 in Japan continued to endeavor to realize rapprochement
21 between the two countries. However, as previously
22 stated HIRANUMA resigned the post of Premier and
23 remained out of office until December 1940, and had
24
25

c. Pros. Sum. par. EE-87, p. 30.

d. Pros. Sum. par. EE-87, p. 31.

1 nothing to do with that situation and there is not one
2 single line of evidence to show that HIRANUMA was a
3 member of that faction. As far as HIRANUMA was concerned
4 the conclusion of the non-aggression pact by Germany
5 with Soviet Russia definitely ended whatever relations
6 existed between Japan and Germany. A vigorous protest
7 was sent to Germany by the Foreign Minister of the
8 HIRANUMA cabinet stating that "The Japanese Government
9 had interpreted the conclusion of the Non-Aggression
10 Pact as finally terminating the present negotiations
11 between Japan and Germany for a Tripartite Pact with
12 Italy."^a
13

14 Regarding the charge made against HIRANUMA
15 in connection with the alleged increase of opium
16 production in areas supposed to have been under Japanese
17 control,^a we should like to point out that the prosecu-
18 tion, in support of the charge, did not cite one single
19 instance of any decision made or any action taken by
20 the HIRANUMA cabinet with regard to the situation.
21 Hence we will not argue the question here because there
22 is nothing to argue.

23 The occupation of the Island of Hainan, which
24 is charged against HIRANUMA in the prosecution
25

a. T. 6123.

a. Pros. Sum. par. EE-58, p. EE-19.

1 summation, was decided by the Navy General Staff some-
 2 time in November 1938, nearly two months before the
 3 assumption of the post of Premier by HIRANUMA. Witness
 4 KONDO testified that "The operation of occupying Hainan
 5 Island was planned while I was, as above mentioned,
 6 in the position of the Chief of the First Department
 7 of the Navy General Staff (around November 1938),"^a
 8 and that "the Hainan Island Operation was based upon
 9 an order 'Occupy Hainan Island' which was issued by
 10 the Imperial Headquarters in January 1939 and was car-
 11 ried out in the form of a joint operation by the navy
 12 and army."^d

14 The occupation of Hainan Islands was made
 15 exclusively on the basis of purely strategic require-
 16 ments."^a The relation between the cabinet and the
 17 Supreme Command in Japan is very explicitly set forth
 18 in the prosecution summation. They state, in substance,
 19 that the Supreme Command was independent of the govern-
 20 ment in its own sphere and was entitled to participate
 21 in all important policy decisions along with the
 22 government. They further state that the Supreme Com-
 23 mand became so strong that, as stated by TOJO, Japan
 24

- 25 b. Pros. Sum. par. EE-79, p. EE-27.
 c. Tr. 26,864; Ex. 3014.
 d. Tr. 26,866.
 a. Tr. 26,867.

1 had no political organ which could restrain the High
2 Command from plunging the nation into hostilities;
3 but they further allege that it should be noted that
4 while there was no organ of control, the government did
5 have power to control expenditures. We concur fully
6 in this particular view. The only control the govern-
7 ment had over the Supreme Command was its control over
8 the budget and it can be readily seen that in a case
9 such as the occupation of Hainan Island, which was a
10 matter of pure strategy and was decided by the Supreme
11 Command in 1938, before the HIRANUMA cabinet was formed,
12 that HIRANUMA could not possibly have had anything
13 to do with it even though the actual operational order
14 was given in January; the month of his acceptance of
15 the portfolio. In any event the HIRANUMA cabinet had
16 no authority to act on any operational matter; except,
17 in case of an emergency military budget to defray the
18 expenses of such an operation, and since this had already
19 been done in November preceding the formation of the
20 cabinet in January of the following year, and since
21 the military already had the money, we submit that the
22 prosecution has no grounds upon which to charge the
23 occupation of Hainan Island to HIRANUMA.
24
25

b. Pros. Sum. par. K-15, p. 16.

a. Tr. 26,866.

1 The general defense summation on the so-called
2 Nomonhan Incident is sufficient to refute the allega-
3 tion of the prosecution that it was a case of Japanese
4 violation of the Mongolian People's Republic and we
5 will not discuss it here except to draw the Tribunal's
6 attention to part of HIRANUMA's answers to the
7 prosecution's interrogations. His answers demonstrate,
8 among other things, that in this case also the army
9 acted independently of the government; that HIRANUMA
10 knew nothing about it at the time of outbreak of
11 hostilities and that as the Supreme Command of the army
12 was not controlled by the government, HIRANUMA could
13 not give orders for cessation of the hostilities. All
14 he could do was express, to the War Minister, his
15 views on the necessity of ceasing hostilities and this
16 he did do. They also demonstrate that HIRANUMA's
17 opinion was that all disputes should be settled by
18 peaceful negotiation and not by way of military opera-
19 tions.
20

21 The attitude of HIRANUMA toward Wang Ching-wei
22 and his peace movement is most eloquently disclosed
23 in HIRANUMA's interview with Wang held on 10 June
24 1939. The gist of that conversation has already been
25 cited.
26

a. Tr. 7855-6.

b. Tr. 22,262.

1 Government was a government established by the free
2 will of members of the Chinese Nationalist party has
3 been fully discussed in the China phase of the defense
4 summation and we have nothing to add at this time.

5 The activities of the Japanese Air Force,
6 during the time when HIRANUMA was Premier, is a matter
7 for the Supreme Command as we have already shown by
8 our previous argument, and we have nothing to add to
9 the general summation of the defense on that phase.

10 STATE MINISTER.

11 HIRANUMA joined the Second KONOYE Cabinet on
12 6 December 1940, as a minister without portfolio nearly
13 five months after its inauguration on 17 July 1940.
14 Soon after joining the cabinet he assumed the post of
15 Home Minister and following the resignation of the
16 Second KONOYE Cabinet resumed the post of the minister
17 without portfolio in the Third KONOYE Cabinet. However,
18 owing to injuries sustained by him on 14 August 1941,
19 on the occasion of an attempt of a group of lawless
20 rightists to assassinate him,^a he was incapacitated
21 from attending official duties until 29 November 1941.^b
22 HIRANUMA's life was again endangered by an attack of
23 a gang of about forty men comprised mostly of soldiers
24

25 a. Tr. 30,948, Ex. 3340.

b. Pros. Sum. par. EE-123, p. EE-42, 43.

and students.^c This occurred on 15 August 1945 immediately after he had attended a meeting in which it was definitely decided to accept the terms of the Potsdam Declaration. The gang was led by an army captain named SASAKI, who shouted that HIRANUMA was a notorious leader of the pro-Anglo-American group.^a According to the testimony of KIDO, based upon an entry in his diary under date of 31 May 1937, HIRANUMA was of the opinion that it was preferable to have the then Imperial Household Minister, MATSUDAIRA, named as Premier because the political situation was such at that time that it was necessary to coalesce with Great Britain in international relations.^b This evidence shows that HIRANUMA had always entertained a pro-Anglo-American feeling and was known as the leader of the pro-Anglo-American faction in the country. His policy to retain cordial relation with the British Commonwealth and to cooperate with the United States in world politics is also clearly demonstrated in the previously discussed affidavit of Major General Piggott (DT29229) and Mr. Doonan's letter (ET29228).

Whatever policy the 2d and 3d KONOYE cabinet is alleged to have pursued, the fact remains that their

- c. Tr. 29,322-26; Ex. 3231.
a. Tr. 29,323; Ex. 3231.
b. Tr. 31,250-51.

1 life depended upon the question of negotiations between
2 the United States and Japan. According to the defense
3 witness MITARAI, the resignation of the 2d KONOYE cabinet
4 was decided upon in order to bring about the resignation
5 of Foreign Minister MATSUOKA and to reshuffle the entire
6 cabinet. MATSUOKA's resignation was considered neces-
7 sary if the purpose of carrying out Japan's negotiations
8 with the United States was to run smoothly and
9 effectively.^a The 3d KONOYE cabinet according to the
10 prosecution's citation did fall because the army desired
11 to go to war, and KONOYE felt that the negotiations could
12 be successful; however, he was unable to convince the
13 opposition.^b

14 Even in the middle of the disruption of the
15 KONOYE cabinets, HIRANUMA's firm belief in peaceful
16 settlement of international conflicts never wavered.
17 As is shown by the interrogations taken from him by
18 the prosecution it was not a mere simple matter of
19 being pro-British or pro-American. He basically was
20 opposed to power politics and was convinced that dis-
21 putes should be settled by negotiations and not by
22 arms.^c SAITO, Yoshie, testified how HIRANUMA, in a
23 cabinet meeting in May 1941, when KONOYE, MATSUOKA and
24

25 a. Tr. 17,796-7.

b. Pros. Sum. par. G-112, p. G-104.

c. Tr. 7856.

1 other ministers were present, made a speech in which
2 he stated that Japan must not fight for any reason what-
3 soever. In this speech HIRANUMA gave his reasons and
4 stated that if a war started between big powers, it was
5 not only highly probable, but almost inevitable that
6 such a war would develop into a world-wide conflagration
7 and the human race would be thrown into misery.^a

8 The prosecution state that "In the new cabinet
9 formed by TOJO there was no place for those who wished
10 to go forward with the conspiracy by negotiation, and
11 thus KONOYE, TOYODA, OIKAWA and HIRANUMA were dropped."^b
12 Well, it just so happens that these accused are charged
13 with carrying on a conspiracy to wage aggressive war,
14 and with actually engaging in aggressive war as a result
15 of this conspiracy. We should like the prosecution to
16 answer two problems for us which we frankly admit we
17 cannot solve. One is, how can a conspiracy to wage
18 aggressive war be carried on by negotiations when
19 such negotiations are aimed at peace with the very
20 nation that is marked as the victim of the conspiracy?
21 The second is, assuming for the sake of argument the
22 absurd position that such a conspiracy could be carried
23 on to its ultimate fulfillment, how are you going to
24 wage an aggressive war by negotiation?
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a. Tr. 29,243.

b. Pros. Sum., par. G-115, p. G-106.

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1 The prosecution admit, in effect, what we
2 believe we have already established and that is the
3 fact that HIRANUMA was never in such a conspiracy.
4 We thank the prosecution for its fairness in admitting
5 that HIRANUMA did not go along with the war cabinet
6 and was therefore dropped from the conspiracy. At
7 the very least the statement of the prosecution is an
8 admission that HIRANUMA was against the policy of
9 solving the pending problem by force of arms.

10 It seems that it is a favorite argument of
11 the prosecution to say that because a man did not
12 resign his post in a cabinet, even though he continued
13 to oppose its policy, that he should none the less
14 be held liable for the policy of the cabinet and share
15 its responsibility. If this man stayed in the cabinet
16 because he believed that only by doing so he can
17 stop the country from plunging into war, is it fair to
18 charge him with responsibility for the war? Does not
19 his state of mind count? HIRANUMA stayed in the KONOYE
20 Cabinet because he believed it was his duty to stop
21 war yet the prosecution accuse him with the alleged
22 conspiracy for aggressive war because, in the KONOYE
23 Cabinet, certain policies were adopted in spite of
24 his opposition. HIRANUMA was dropped because there
25 was no room for him in the war cabinet, but the

1 prosecution still attempt to hold him responsible by
2 a negotiation conspiracy, whatever that is.

3 Numerous policies and decisions adopted by
4 the 2nd and 3rd KONOYE Cabinets, which are charged
5 against HIRANUMA, are subjects of the general summation
6 and therefore we will confine ourselves to answering
7 the charge made in connection with the manufacture of
8 military currency notes (a). Prosecution's Exhibit
9 852, a Japanese Government Document, clearly shows
10 that this matter was treated as a "military secret"(b)
11 and that the procedure of the issuance of military
12 currency notes was conducted by the Premier, Army, Navy
13 and Finance Ministers (c), HIRANUMA, who was then the
14 Home Minister, had nothing to do with it.

15 SENIOR STATESMAN

16 The prosecution, in presenting its version
17 of what occurred in the Senior Statemen's meeting
18 of November 29, 1941, relies on the testimony of the
19 accused TOJO instead of the witness OKADA, Keisuke.
20 This is surprising because this same witness had also
21 been used by the prosecution on another highly
22 important phase of the case. It was during the cross-
23 examination of this witness that the Chief Prosecutor,
24

- 25 (a) Pros. Sum., par. EE-106, pp. 36-37.
(b) T. 8,452.
(c) T. 8,458.

1 Mr. Keenan, told the Court, "Your Honor, I state that
2 the prosecution has great respect and confidence in
3 (a)
4 this witness."

5 It is noteworthy that this remark regarding
6 OKADA was made shortly after his testimony in chief
7 concerning the Senior Statesmen's meeting of 29
8 November 1941 and during cross-examination on that
9 very subject. There is no denying that the Chief
10 Prosecutor respected and believed every word of his
11 testimony. It is no wonder that we now think it
12 strange that in the prosecution summation of the HIRANUMA
13 case the confidence in OKADA has suddenly waned and
14 every word of TOJO which contradicts OKADA is cited
15 as their ground for condemning HIRANUMA. We submit
16 that OKADA's testimony is true and that the prosecution
17 have estopped themselves from denying it.

18 According to OKADA, what happened in the
19 meeting of the Senior Statesmen held on 29 November
20 1941 is as follows:

21 "The Premier did not state that the Government
22 had decided at that time to go to war and the members
23 of the Government did not attempt to persuade us in
24 support of war. However, each Elder Statesman asked
25 questions of the Ministers who were present. To the
(a) T. 29,301.

1 questions, they replied that the position of the
2 Government would be well understood if the factual
3 grounds were shown and if they could disclose and cite
4 figures which they had, but which they stated they
5 could not disclose since they were State secrets.
6 None of the Elder Statesmen supported or encouraged
7 war, especially WAKATSUKI, KONOYE, HIRANUMA and I.
8 Without any previous consultation or deliberation, we
9 urged the Government to reconsider the matter very
10 carefully and to proceed with extreme caution in
11 any matter which might bring about hostilities. We
12 all expressed negative opinion. *** Inasmuch as we
13 were not told that the Government had decided upon
14 war, and as we were not informed of the grounds which
15 were based upon the figures which the members of the
16 Government told us were being treated as State secrets,
17 we had no opportunity to go into the matter deeply.
18 Because of lack of exact information, which was withheld
19 from us for the reason mentioned, we had to confine
20 ourselves to the expression of negative and dissuading
21 opinions. *** I warned that the country must not be
22 driven to a sudden crash, which, in my opinion, would
23 be far worse than the slow strangulation which the
24 Premier feared. This opinion was concurred in completely
25 by Baron HIRANUMA. *** The great majority of us,

1 including Baron HIRANUMA, were not satisfied with the
 2 explanation given by the Government authorities and
 3 having deep concern for the future welfare of the
 4 nation, we stated that the Government must handle
 5 the matter with utmost caution***we parted with absolutely
 6 no premonition that within less than ten days the
 7 attack on Pearl Harbor would have been made." (a)

8 Upon cross-examination by the Chief Prosecutor,
 9 it was brought out that in the meeting of November 29th
 10 the Senior Statesmen earnestly and persistently
 11 sought information from the Cabinet upon which they
 12 could base a judgment so that intelligent advice could
 13 be given to the Emperor, but that such information
 14 was refused on the ground that the matters concerned
 15 were state secrets. (a) It was also brought out that
 16 the Senior Statesmen wished to know very badly whether
 17 it was the intention of the Government to strike immedi-
 18 ately at America, Great Britain and the Netherlands
 19 by way of actual war, but this they were not told
 20 either. (b) The Court was also told that what the
 21 witness OKADA meant by saying "expressed negative or
 22 dissuasive opinion" was that having received no
 23 worthwhile information from the Prime Minister, the
 24

25 (c) T. 29,260-1-2; 29,290
 (a) T. 29,279-80
 (b) T. 29,285

1 Senior Statesmen could not give the Emperor much
 2 worthwhile advice, but just told the Emperor they
 3 were very worried about the fact. (c) It was further
 4 revealed on cross-examination that if the Senior
 5 Statesmen had known that the fleet was on its way to
 6 Pearl Harbor definitely, they would have vehemently
 7 urged the Emperor to make every effort to avoid this
 8 opening of the war. (d)

9 As a result of the cross-examination by Dr.
 10 KIYOSE, appearing for the accused TOJO, certain issues
 11 involved in OKADA's testimony were made crystal clear.
 12 It was revealed that while TOJO made many replies to
 13 the questions of the Senior Statesmen, they none-the-
 14 less were not informed of the Government's intention
 15 for the future nor of its current operations and also (a)
 16 that he gave only a general explanation of events
 17 which the Senior Statesmen already knew about and
 18 they learned nothing from him that they really wanted
 19 to know. He also brought out that SUZUKI, the President
 20 of the Planning Board, gave them, as OKADA believed,
 21 figures taken at random; (b) and said that TOJO's
 22 statement, to the effect that if he gave them the
 23

- 24 (c) T. 29,291-92
 25 (d) T. 29,293-94
 (a) T. 29,306-7
 (b) T. 29,308-9

1 figures and statistics they wanted, the Senior
2 Statesmen would understand the situation, was made
3 in the presence of the Emperor at the time OKADA
4 told the Emperor that the morning session was devoted
5 primarily to explanations by the Government but that
6 the more he heard from the Government, the more
7 concerned and anxious he became. (c)

8 As the Chief Prosecutor observed, in his
9 questions on recross-examination to which the witness
10 agreed, the Senior Statesmen's meeting of November
11 29, 1941 was a "more gesture and fraud". (a) Senior
12 Statesmen, HIRANUMA included, were victims of the
13 fraud used effectively by the Cabinet to accomplish it.
14 To borrow the Chief Prosecutor's words, "...they
15 defrauded the people of Japan into believing that the
16 Emperor was behind the war with the rescript that he
17 issued a few days after or instantly a few hours
18 after the attack". (b) Whatever advice HIRANUMA
19 gave to the Emperor on that occasion was, we submit,
20 induced by fraud and should not be charged against him.

22 It should be noted that HIRANUMA did not
23 attend the Senior Statesmen's meeting held on 17

24 (c) T. 29,311
25 (a) T. 29,318
(b) T. 29,304

October 1941, when TOGO was recommended as Prime
 1 Minister. The prosecution conceded that HIRANUMA
 2 was incapacitated from attending to official duties
 3 from 14 August 1941 to 26 November 1941. (c) It should
 4 be noted and it is significant that it was HIRANUMA,
 5 together with other Senior Statesmen, who held a
 6 meeting in his house which resulted in a resolution
 7 being drawn that caused the downfall of the War
 8 Cabinet. (a)

9
 10 OKADA testified that he, HIRANUMA, KONOYE
 11 and MATSUKI, who had always been opposed to the
 12 idea of war, agreed that the war must be brought to
 13 an end by whatever means possible (b) and tried to
 14 introduce into the Cabinet (TOJO Cabinet) Admiral YONAI,
 15 a man who was opposed to war. HIRANUMA and other
 16 Elder Statesmen had become imbued with the idea that
 17 the Cabinet could not cope with the situation (c) and
 18 held a meeting on July 17, 1944 at the home of HIRANUMA
 19 to discuss the situation and to put into writing the
 20 conclusions reached as a result of the discussion. (d)

21
 22 The resolution was passed because it was
 23 apparent that the Cabinet had lost its popular appeal
 24 and the Elder Statesmen were of the opinion that it

- 25 (c) Pros. Sum., para. EE-123, pp. 42-43.
 (a) T. 29,264; Ex. 1277, T. 11,372-3-4
 (b) T. 29,262.
 (c) T. 29,263
 (d) T. 29,264

1 was necessary to retire the Cabinet in order to bring
2 the war to an end. This resolution was handed to
3 the Lord Keeper of the Privy Seal KIDO and the TOJO
4 Cabinet resigned en bloc on the following day, 18
5 July 1944, and on the same day an Elder Statesmen's
6 meeting was convened for the purpose of recommending
7 a head for the succeeding Cabinet. (a)

8 It is true that in the resolution referred
9 to there is a sentence saying, "All people must rely
10 and cooperate to build a powerful national Cabinet,
11 which will surge forward unswervingly." (b) The
12 prosecution cites the latter part of the sentence as
13 if it expresses warlike intentions on the part of
14 HIRANUMA and other Elder Statesmen who participated
15 in formulating the resolution. However, it should
16 be remembered that this was a consummation of a plan
17 worked on by them from a year before and it was not
18 an easy task to cause the all powerful War Cabinet
19 to fall. The eyes of the public were kept blindfolded
20 to things which the Elder Statesmen saw clearly and
21 which worried them. In recommending a new Cabinet
22 to take the place of the War Cabinet and gradually
23 lead the country so as to put an end to war, the Elder
24 Statesmen had to move very cautiously and had to cover
25

(a) T. 29,265

(b) T. 29,264

1 Cabinet which terminated the war. The reason HIRANUMA
2 recommended SUZUKI as the Premier succeeding KOISO
3 is because HIRANUMA thought that the war could
4 certainly be brought to an end if SUZUKI accepted the
5 portfolio of Prime Minister and he told OKADA that such
6 was his reason. (a) It is true that HIRANUMA, in his
7 statement at the meeting, did not divulge his true
8 reason for the recommendation and said instead that
9 a man who would fight it out to the end was wanted.
10 It is a matter of common sense to realize that to bring
11 an end to a war, which had lasted nearly four years
12 and on the result of which the destiny of a nation
13 depended, without creating an internal disruption,
14 would take a man whom the people could look up to as
15 a hero and follow as a leader. After a continual
16 rousing of the public for war for numbers of years
17 and popular feeling and sentiment being at a breaking
18 point, no statesman could suddenly introduce a peace-
19 maker as such and have any hope of success. OKADA
20 testified that HIRANUMA told him in private that the
21 appointment of SUZUKI would bring about an early peace
22 but that he could not say so in public because if he
23 did, it would prevent the formation of the Cabinet. (b)
24
25 (a) T. 29,316
(b) T. 29,317

1 up their true intention to bring about peace by
2 whatever means with high sounding words suitable to
3 the occasion.

4 It would be a hasty and unfair conclusion to
5 judge these men by mere words. What they actually
6 accomplished in forming the new Cabinet is what counts.
7 Immediately after the choice fell upon KOISO; HIRANUMA,
8 OKADA, WAKATSUKI and KONOYE conferred and KONOYE
9 went to the homes of all the remaining Elder Statesmen
10 to get their agreement and make arrangements so that
11 the Emperor's order for the formation of the new
12 Cabinet would be given to KOISO and YONAI jointly,
13 appointing YONAI to the Navy Ministry. Such an
14 Imperial Order was without precedent but KONOYE
15 succeeded in his task. This arrangement of having
16 YONAI appointed to the Navy Ministry was in order
17 to insure a man in the Cabinet who was opposed to
18 (a)
19 war.

20 In the Senior Statesmen's meeting held on
21 5 April 1945, on the occasion of the resignation of
22 the KOISO Cabinet, HIRANUMA succeeded in recommending
23 SUZUKI, Kentaro as head of the succeeding Cabinet. (b)
24 The SUZUKI Cabinet, it must be remembered, is the

25 (a) T. 29,265-29,266
(b) T. 29,266

1 Under the circumstances, nothing could be more
2 natural than his actions.

3 According to the testimony of OKADA, in
4 the Imperial Conference of August 1945 which was held
5 to discuss and decide whether Japan should accept
6 the terms of the Potsdam Declaration, HIRANUMA (a)
7 supported the opinion that Japan should accept it.

8 However, the prosecution cite the testimony of the
9 accused KIDO to prove that HIRANUMA opposed the
10 acceptance. Here we have again the word of a man, in
11 whom the Chief of the prosecution had great respect
12 and confidence, discarded in favor of another accused.
13 We submit that the Chief Prosecutor's confidence
14 was not betrayed and that OKADA told the truth. Even
15 if it were true, a fact which we deny, that HIRANUMA
16 did doubt as to whether the acceptance of the terms
17 of surrender would preserve the national integrity of
18 Japan, that in itself is no criminal act of aggression
19 or for that matter any evidence of one.
20

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(a) T. 29,269.

CONCLUSION

1 In conclusion we should like to point out
2 that HIRANUMA is by far the oldest man in the dock
3 and that throughout many decades of his life he has
4 dedicated himself to the service of his country.
5 He has seen it grow from a fledging backward nation
6 into a powerful world state whose destiny it was to
7 be plunged into a world holocaust but to emerge a
8 defeated and broken nation, its cities destroyed, its
9 peoples impoverished; the whole nation lying prostrate
10 at the feet of its conquerors and subject to the whims
11 of world politics.
12

13 HIRANUMA's life has been dedicated to the
14 principle that disagreements between nations should
15 be settled by negotiation and not by armed conflict.
16 He has recognized, as many do, that in these troubled
17 times any nation which has not an armed show of strength
18 sufficient to cause a possible enemy state to analyze
19 that nation's potential ability to wage war has but
20 little chance at the council tables and must depend
21 upon a combination of nations in order to maintain her
22 national integrity. We assert that simply because a
23 person recognizes this fact does not make him a war
24 monger. The leaders of our great democratic nations,
25 who now seek an everlasting and true peace, recognize

1 that peace can be brought about only by the settlement
2 of the disputes among the mighty and not by the wishes
3 of the small; that until such time as all nations,
4 by common consent, bind themselves together in a
5 commonwealth of nations dedicated to the well-being
6 of all mankind, the hope of world peace is just a
7 will-of-the-wisp, sought after, but not to be obtained.

8 During the lifetime of HIRANUMA we have
9 fought one world war to make the world free for
10 democracy, only to be ensnared a few short years later,
11 into a global conflict that was to affect destinies
12 of every nation on the earth.

13 HIRANUMA is charged with having conspired
14 to bring about this war. He was not a young man at
15 the termination of World War I when his nation was
16 aligned with the Allies, and his ideals of life had
17 already been solidified at that time. It is hard to
18 believe that in the mellow years of life he should
19 suddenly change.
20

21 The evidence against HIRANUMA does indicate
22 that from time to time he may have committed some
23 act which would appear to be in furtherance of a
24 desire for war. However, it must be borne in mind
25 that there were times when he and a few others in
Japan were the only bulwark against the rising tide

1 of war. Those who opposed war were in some instances
2 assassinated and their lives were in constant danger.
3 It is incredible that the actions of HIRANUMA could
4 have been a part of a conspiracy to wage aggressive
5 war when the very proponents of such ideas were almost
6 successful in an attempt to assassinate him because
7 of his opposition to their plans. It is no wonder
8 that any man facing such odds would from time to time
9 be forced into a position of apparent compliance.
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On occasions it was even necessary that such be done if any position of power was to be retained which could assist in the campaign to avoid plunging Japan into war with the United States and Great Britain. These times of apparent compliance, to which we have referred viewed in respect to the long over-all period of HIRANUMA's services to his country, are few, and have gained prominence only because of this trial. Unfortunately we were not permitted to present character evidence and consequently the Tribunal is not officially aware of the opinions of such men as General Piggot and ex-Ambassador Grew. However, the court can take into consideration that such evidence was offered and that these men were perfectly willing to testify on behalf of HIRANUMA. We ask the Tribunal to take into consideration the fact that they were so willing to testify even though the Tribunal excluded the substance of such testimony.

Finally, in the dark days before the acceptance of the Potsdam Declaration, we know that again HIRANUMA stood steadfast in his seeking for peace. Even though he realized, from a lifetime of service to his nation, that Japan could never be but a shell of her former self he more fully realized that to continue the war could only bring further misery and deprivation to his fellow

1 countrymen. This he was not willing to do. On that
2 fateful morning, following the decision to accept the
3 terms of the Potsdam Declaration and to remove Japan
4 from the further misery of war, HIRANUMA, having failed
5 to have been assassinated as an obstacle to those who
6 proposed the war, was singled out as a victim of revenge
7 for those who opposed its end. Amid the obscene mouth-
8 ings of an army-led mob shouting imprecations on his
9 aged head, his home was burned, his family terrorized
10 and he, himself, barely escaped with his life. Indeed,
11 the road to peace has many turnings, and the way is
12 rough and he who treads it must bear with fortitude his
13 crown of thorns.

14 With this thought we leave the fate of HIRANUMA
15 in the hands of the Tribunal.

16 - - -

17 THE PRESIDENT: Captain Brooks.

18 MR. BROOKS: I wish to announce, Mr. President,
19 that the prosecution summation paragraphs NN-1 to 35
20 referred to in this summation of MINAMI's may be found
21 at record page 41,276 to 41,310 of 25 February 1948.

22 I will read the first 160 pages of Parts I and
23 II, as shown by the perpendicular lines. Mr. OKAMOTO,
24 my co-counsel, will read the remaining pages.

25 Mr. President and Members of the Tribunal, on

1 behalf of MINAMI, Jiro, we respectfully submit our
2 final arguments with regard to the Counts of the Indict-
3 ment, which are, to avoid duplication, grouped together
4 as follows:

5 Part I. Counts 1, 4 and 5.

6 Part II. Counts 2, 3, 6, 18, 27 and 28.

7 Part III. Counts 7 to 17, 29 to 32 and 34.

8 Part IV. Counts 44 and 53 to 55.

9 In the remaining Counts 19 to 26, 33, 35 to 43,
10 and 45 to 52, there is no charge against MINAMI.

11 Paragraph C-18 drops Count 44 and 53.

12 PART I. Counts 1, 4 and 5.

13 These Counts charge MINAMI with conspiracy to
14 secure Japan's domination of East Asia and of the world
15 (with Germany and Italy) by the waging of illegal wars
16 against any or certain opposing countries.

17 1. The period of the alleged conspiracy starts
18 from January 1, 1928, but Section 1, Appendix A of the
19 Indictment does not charge any Japanese Government which
20 held power prior to December 13, 1931. It follows,
21 therefore, that any and all acts of MINAMI done by orders
22 and in compliance with policies of those Governments are
23 not within the purview of the present trial.

24 Note: (1) Ex. 2292, MINAMI's letter of October
25 6, 1927, as Deputy Chief of General Staff to KOMATSUBARA,

1 Military Attache at the Japanese Embassy in the U.S.S.R.
2 (pp 19,941-19,948) and Ex. 2207, Interrogation of
3 MINAMI referring to the Tsinan Incident (p. 15,784) are
4 clearly out of the scope of the Indictment. Moreover,
5 MINAMI's actions were made "under the orders of the
6 Chief of Staff and the TANAKA Cabinet," MINAMI (p. 15,784

7 (2) The prosecution alleges that such a
8 conspiracy had existed since the introduction of
9 "military training in the school system following the
10 Sino-Japanese War of 1896" and its intensification in
11 1922 "sponsored by the military" and since the commence-
12 ment of "an organized propaganda program" in 1925
13 "advocating the necessity for expansion by Japan" (Mr.
14 Hammack, pp. 808-811). We do not consider it necessary
15 to refute the allegation which has no evidence to show
16 MINAMI's connection therewith.

17 2. At any rate, the period up to the resign-
18 ation of the WAKATSUKI Cabinet in December, 1931, was
19 admittedly the period of the "friendship policy"
20 (Lytton Report, Ex. 57, (p. 41), p. 1,757), of armament
21 reduction and of financial retrenchment (MINAMI, Ex.
22 2435, pp. 19,776 - 19,777). In 1922, Japan signed the
23 Washington Disarmament Treaty and the Nine Power Treaty
24 (Ex. 2319, Ex. 28). In 1924, she reduced her standing
25 army by four divisions (UGAKI, Ex. 163, p. 1,604;

1 MINAMI, p. 19,776). In 1928, she signed the Kellogg-
2 Briand Pact (Ex. 32) and in 1930, the London Disarmament
3 Treaty (SHIDEHARA, Ex. 156, p. 1,322). In April, 1931,
4 the mobilizable strength for wartime was reduced from
5 32 to 28 divisions and a proposal was under consider-
6 ation to further reduce the peacetime strength of 17
7 divisions (KOISO, Ex. 3375, p. 32,206). In May, 1931,
8 military officers' salaries were cut down, ranging from
9 5.8% for first lieutenants to 12% for generals (Ex.
10 3414, p. 32,803) and the War Ministry was deliberating
11 upon a reduction of their pensions (NAKAMURA, Ex. 3413,
12 pp. 32,803 - 32,804.) Even a plan made by the ex-
13 Cabinet for the reformation of organization and equip-
14 ment of the army was suspended (NAKAMURA, p. 32,804.)
15 It must be acknowledged that MINAMI, either as Deputy-
16 Chief of General Staff or as War Minister in these days,
17 played an important part in the formation and execution
18 of such policies towards peace.

19 3. It is alleged by the prosecution that "in
20 1927 the Japanese Government formulated a positive
21 policy toward China which resulted in sending troops to
22 China in May, 1927, and in April, 1928" (Mr. Keenan,
23 p. 437; Mr. Darsey, pp. 1,680 - 1,681.)

24 Note: (1) The prosecution alleges that upon
25 the advent of the TANAKA Cabinet in 1927, the army was

1 able to influence the government to adopt a so-called
2 "positive policy" toward Manchuria (Mr. Darsey, p. 1,680.)

3 Such an allegation, however, it contradicted by
4 the prosecution's own statement in document No. 0001
5 (p. 1) that "the TANAKA Cabinet conducted a peaceful
6 policy as shown by TANAKA's speech to the Diet on 22
7 January 1929 (Ex. 171, p. 1,769) in which he states Japa-
8 nese contributions to world peace in respect to Manchurian
9 interests and Chinese sovereignty will not be jeopardized.
10 . . .The HAMAGUCHI Cabinet, in power from 2 July, 1929 to
11 4 April 1931 adhered to the peaceful policy of the
12 TANAKA Cabinet."

13 The only evidence adduced for this allegation is
14 perhaps the Lytton Report (p. 41) where TANAKA's policy
15 is compared with that of SHIDEHARA (p. 1,757) but all
16 the witnesses produced by the prosecution deny any
17 sinister meaning in the so-called "positive policy."

18 Note: (2) OKADA (Navy Minister in the TANAKA
19 Cabinet, 1927-1929) is sincerely convinced that such a
20 thing as the "TANAKA Memorandum" did not exist (p. 1,835)
21 and that there was no plan nor policy ever conceived,
22 such as military aggression towards Manchuria and other
23 areas in China (p. 1,888.) He entertained trust and
24 confidence in the leaders of the army, but deemed only
25 the conduct of a few young officers as unfortunate and

undesirable (p. 1,904.)

1 (3) MORISHIMA (Consul at Mukden, 1928-1932)
2 test. that the so-called "TANAKA Memorial" was a
3 fake (pp. 3,097 - 3,098.) At the time of the Nanking
4 Incident in 1927, the Japanese and foreign residents
5 there suffered much damage at the hands of Chinese
6 forces and the British, American and Japanese Governments
7 sent rescue troops (pp. 3,040 - 3,041.) Since then,
8 the public opinion in Japan had become stronger for
9 protective measures on the spot and Premier TANAKA was
10 forced to form his policies in line with such opinion
11 (p. 3,041.) The dispatches of troops to Tsinan on two
12 occasions were made necessary as a result of a general
13 advance of the Chinese revolutionary forces in North
14 China (pp. 3,039 - 3,040.) "It is a mistake to state
15 as a premise that the positive policy of the TANAKA
16 Cabinet was an aggressive one." The only difference
17 between the HAMAGUCHI Cabinet and the TANAKA Cabinet as
18 regards their Manchurian policies was that the former
19 was limited to the protection of vested interests in
20 that area while the latter placed its primary emphasis
21 on the maintenance of law and order in all of Manchuria
22 (p. 3,078.)
23

24 It is a noteworthy fact that it was the TANAKA
25 Cabinet who wholeheartedly joined in the Treaty for the

Renunciation of War (Ex. 32.)

1 The note sent from the British Foreign Secre-
2 tary (Chamberlain) to the American Ambassador (Houghton)
3 under date of May 19, 1928 (Ex. 2314-A) states as follows:

4 "The Language of Article I, as to the renunci-
5 ation of war as an instrument of national policy, renders
6 it desirable that I should remind Your Excellency that
7 there are certain regions of the world the welfare and
8 integrity of which constitute a special and vital inter-
9 est for our peace and safety. His Majesty's Government
10 have been at pains to make it clear in the past that
11 interference with these regions cannot be suffered. Their
12 protection against attack is to the British Empire a
13 measure of self-defense. It must be clearly understood
14 that His Majesty's Government in Great Britain accept
15 the new treaty upon the distinct understanding that it
16 does not prejudice their freedom of action in this
17 respect. The Government of the United States have com-
18 parable interests any disregard of which by a foreign
19 power they have declared that they would regard as an
20 unfriendly act. His Majesty's Government believe,
21 therefore, that in defining their position they are ex-
22 pressing the intention and meaning of the United States
23 Government." (pp. 17,365 - 17,366.) It is nothing but
24 the same sentiment which made TANAKA speak at the Diet
25

1 on January 22, 1929, that "the Japanese Government, while
2 they will respect the sovereignty of China over Manchur-
3 ia and do all in their power for the preservation of the
4 principles of the open door and equal opportunity, are
5 fully determined to see that no state of affairs arise
6 in Manchuria which shall disturb the local tranquility
7 and thus put their vital interest in jeopardy" (Ex. 171,
8 v. 1,770.)

9 Note: (4) To this policy of the TANAKA
10 Cabinet, no objection was raised by other Powers.
11 According to OKADA, "the advance into Manchuria was to
12 be made peacefully as an alternative to expanding with
13 other sections of the world; for instance, advance to
14 America, which was prevented by a "gentlemen's agree-
15 ment" (p. 1,833) and Premier TANAKA believed that the
16 concentration of immigration to Manchuria was tacitly
17 agreed to by America (p. 1,858.)

18 In our submission, the measures taken by the
19 Japanese Government, in particular by War Minister
20 MINAMI, at the time of the Manchurian Incident did not
21 exceed the limit of self-defense as defined by the
22 British Government in the note above-mentioned (see
23 Part II below.)

24 4. It is alleged by the prosecution that
25 "from January 1, 1928, onwards there was a plot in the

1 Japanese Army, and particularly in the Kwantung Army,
2 supported by certain civilians, to create an incident
3 in Manchuria, which should form a pretext for Japan to
4 conquer, occupy and exploit that country as the first
5 step in a scheme of domination which later extended to
6 other parts of China, to the territory of the Union of
7 Soviet Socialistic Republic, and ultimately to a wider
8 field, aiming to make Japan a dominant power in the
9 world (Section I, Appendix A of the Indictment; Mr.
10 Keenan, p. 437; Mr. Darsey, pp. 1,680 - 1,681.) There
11 is, however, no evidence that MINAMI concurred in such
12 a plot, if it ever existed. Prosecution witness
13 WAKATSUIK (Premier in 1929 and 1931) testified that he
14 "never heard of anything of the kind," such as a con-
15 spiracy by the defendants or any other persons to plan
16 and wage wars of aggression to conquer China and the
17 Pacific Ocean and eventually the world (p. 1,591.)

18
19 Defendant KIDO, collector and chronicler of
20 all rumors true and false, asserts that he has never
21 received any information that MINAMI, as War Minister,
22 army officer or ordinary civilian, participated in plots
23 or machinations of the so-called militarists (pp.
24 31,236.) On the contrary, it is proved that MINAMI was
25 "firmly resolved to prohibit all these activities within
the army" (ex. 3416, report of August 19, 1931, from

1 TOYOMA, Commander of Tokyo Military Police, to MINAMI
2 referring to a lecture given by TOYOMA to his subord-
3 inates, p. 32812.)

4 Note: Ex. 3416 says that meetings of young
5 officers for discussion of the Manchurian-Mongolian
6 question and other problems of the present situation
7 tend to overstep the scope of study and turn into con-
8 crete activities, which are apt to be exploited
9 politically by outsiders and to become a breach of
10 military discipline. "Should this tendency infect non-
11 commissioned officers and men, it would undermine the
12 foundation of the military constitution and invite a
13 thousand years' misfortune." In accordance with the
14 resolution of MINAMI, therefore, the military police
15 was ordered to co-operate in the guidance of young
16 officers and to stave off any ill effects upon military
17 discipline (pp. 32,810 - 32,812.)

18 If his predecessor UGAKI stopped the March
19 Incident (UGAKI, Ex. 163; p. 1,608,) MINAMI dealt with
20 the October Incident by immediate apprehension of the
21 plotters (MINAMI, Ex. 2435, p. 19,790.) At the meeting
22 of the Privy Council on December 9, 1931, Councillor
23 EGI was "quite satisfied" on hearing MINAMI's answer
24 referring to the Incident (Ex. 2205-A, p. 15,767.) KIDO
25 also listened with confidence in the explanation of the

1 March and October Incidents given by NAGATA, a section
2 chief of the War Ministry under MINAMI (p. 31,235.) All
3 this evidence points to the fact that MINAMI was the
4 defender of law and order against any conspiracy alleged
5 by the prosecution.

6 5. It is alleged also that MINAMI "advocated
7 and planned the Mukden Incident" (Colonel Woolworth,
8 p. 15,751) on the basis mostly of newspaper reports.
9 We cannot, however, understand why a luncheon party
10 held by the army authorities in company with some
11 directors of the South Manchurian Railway Company
12 (hereinafter referred to simply as the S.M.R.) has any
13 sinister meaning, even if they discussed Manchurian
14 questions (Ex. 2202-A; pp. 15,752- 15,753) or why
15 MINAMI's statement, refusing any increase of troops in
16 Korea, has anything to do with the Mukden Incident,
17 except in the contrary sense (Ex. 2202-A, pp. 15,753 -
18 15,754.)

19 Note: (1) Ex. 2202-A, the Osaka Asahi of
20 July 1, 1931, reports nothing more serious than the
21 above two events. The former was a courtesy banquet
22 given by the War Ministry by way of a return invitation
23 to the leading members of the S.M.R. and no talks were
24 made discussing politics pertaining to Manchuria and
25 Mongolia (KOISO, Ex. 3375, pp. 32,215 - 32,216; SOGO,

Ex. 3415, pp. 32,809, language corrections at p. 31,705;

1 MINAMI, p. 19,811.) The latter was MINAMI's statement
2 after an unofficial conference of military councillors.
3 According to MINAMI's testimony, there was a long-
4 standing desire on the part of the army and civilian
5 circles in Korea to increase the divisional strength
6 there, for the purpose not only of defense but of
7 promoting the local prosperity. On becoming the War
8 Minister, however, MINAMI found it impossible to comply
9 with their desire (pp. 19,812 - 19,813.) To quell the
10 urgings of lobbyists sent from Korea to Tokyo he said:
11 "I must make it clear that this question had not yet
12 been decided upon at the Big Three Conference. There-
13 fore, such things as what division will be dispatched
14 to Korea or where it will be stationed are not the
15 question at all. In order to avoid unnecessary anxieties
16 on the part of the local people, I state this" (pp.
17 15,753 - 15,754, language correction at p. 31,705.)

18 Note: (2) Ex. 2203-A, excerpt from a bio-
19 gaphy of MINAMI, well deserves the following remark of
20 the President: "Why put that before us? If the world
21 knows that we get this stuff and believe we act on it,
22 what will they think of us? It is nonsensical. We are
23 judging these men, not the editors of the Japanese press
24 or the caricaturists, and we judge them from what they
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say and do and from what others in association with
1 them say and do" (pp. 15,758.)

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6. Also, we cannot find anything approaching to "the dissemination of expansionist propaganda," as alleged by the prosecution (p. 2193) in his speech at the divisional commanders' conference of August 4, 1931 (Ex. 186 and 2393).

Note: (1) It is said that "the prosecution has gone through all available newspapers, and the Japan Times is the only one that had quotes of the speech in it" (p. 2204). However, according to exhibit 2393, the Japan Chronicle of April 5, 1931, MINAMI spoke at the conference that owing to the strained financial circumstances of the state, the military authorities were obliged to defer improvements of organization and equipment, that the abolition or reduction of some institutions and officers were inevitable and that a preparatory committee was appointed for the forthcoming assembly of the Geneva Disarmament Conference (pp. 19200-19203). According to MINAMI's testimony, the allotment for the army was only 180 million yen out of the total budget of 1448 million and it was necessary to cut down numerical strength, dismiss a number of officers and make adjustment in various branches of army service (pp. 19815-19816). As such reductions were made repeatedly by his predecessors, he had to explain as

best as he could the acute situation facing the army,
1 lest his further reform might cause public unrest
2 (p. 19816, p. 19819). He stressed, therefore, that
3 the divisional commanders should devote their efforts
4 to the education and training of officers and men to
5 make up the loss (p. 19819). He instructed them also
6 to be well acquainted with Manchurian problems which
7 were becoming important at that time (p. 19814-19815).
8 He expressed the view that Manchuria was Japan's life
9 line (p. 19807), but never entertained any idea of
10 using it as a route through which to attack Russia
11 (p. 19809). In the event of an attack by Russia,
12 Japan was to participate in the defense of Manchuria
13 through diplomatic negotiations with China, without
14 involving the latter in the clash (pp. 19807-19808).
15 This is nothing but the same thought as that expressed
16 by Chamberlain.
17

18 Note: (2) Exhibit 184, letter of August 6,
19 1931, from the so-called Citizen's Disarmament League
20 to MINAMI referring to his speech, has no more logic
21 than ravings of a lunatic, when it charges him with a
22 violation of Article 103 of the Military Criminal
23 Code. It is certainly within the competence of a War
24 Minister to "present a memorandum to the Throne, his
25 views to the Government, or any other kind of petition

1 concerning political matters, or give publicity to
2 his opinions either in discourse or in written form"
3 (p. 2193).

4 7. According to the Lytton Report (Ex. 57,
5 p. 67), it is said that "vigorous speeches of the
6 Japanese War Minister in Tokyo, counselling direct
7 action by their army in Manchuria, were reported"
8 (p. 1785). There is, however, no evidence either in
9 the above-mentioned speech or in any other that he
10 counselled anything of the sort. Casual references
11 to hasty advocates of armament limitation and to the
12 recent situation in Manchuria (p. 2209) do not super-
13 sede the real purport of his speech, proclaiming
14 retrenchment and arms reduction, which was perfectly
15 in accord with the policy of the Government. Compare
16 the speech of MINAMI with the one made by Premier
17 WAKATSUKI on July 21, 1931 (Ex. 2392). While repudi-
18 ating any imperialistic schemes and all desire for
19 territorial aggrandizement, WAKATSUKI asserted that
20 Japanese rights and interests in Manchuria and
21 Mongolia were essential to her existence and could
22 in no circumstance be abandoned, no matter who
23 demanded their abandonment, and that Japan was unable
24 to exercise her treaty rights and privileges of res-
25 idence and leaseholding on account of Chinese

determination to drive the Japanese off the land
(pp. 19195-19197). Compare the same with the
speeches of General Chiang Kai-shek, President of
the Nanking Government, who openly and repeatedly
denounced Japan on September 7 and 14, 1931, for
her alleged activities in connection with the Canton
revolt, for the murder of Chinese in Korea and for
occupation of Wanpoashan in Manchuria (Ex. 2396 and
2397, pp. 19210-19214). According to the Japan
Chronicle of September 9, 1931, "It is feared that
the General's (Chiang) inflammatory address will add
fuel to the anti-Japanese agitation now going on in
various parts in China" (p. 19211). It is, there-
fore, not fair on the part of the Lytton Report to
refer to MINAMI's speech, which was no more vigorous
than the Japanese Premier's, and to forget to mention
the "fiery attacks" upon Japan by the Chinese Presi-
dent (p. 19210).

Note: It is difficult to understand why
such a mild and harmless speech of MINAMI became so
notorious, unless we accept the explanation of NAKA-
MURA, Chief of Personnel Bureau of the War Ministry
in 1931, that a plot was laid by a section of some
political party who, taking advantage of the instabil-
ity of the situation in those days, planned to

1 overthrow the Government by tripping up a member of
2 the Cabinet (Ex. 3413, pp. 32805-32806).

3 8. The fact that MINAMI did nothing in
4 opposition to the Government was clearly testified
5 by WAKATSUKI (pp. 1583 - 1584). According to
6 SHIDEHARA's testimony, he and MINAMI never maintained
7 opposite ideas, neither came into loggerheads nor had
8 emotional frictions with each other. They worked
9 together, resigned together and have been on intimate
10 terms to this day (Ex. 3479A, pp. 33551-33552).

11 Note: SHIDEHARA emphatically refutes the
12 allegation of TANAKA, Ryukichi (pp. 2019-2020;
13 pp. 20065-20066), as "simply a mischievous rumor
14 spread by persons, who do not know the true facts"
15 (p. 33551). He is convinced that MINAMI made every
16 effort to cooperate with the Cabinet in making arma-
17 ment reductions (p. 1328) and did everything in his
18 power to prevent the further expansion of the
19 Incident (p. 1338; p. 33551).

20 9. Although it was reported by a New York
21 Herald Tribune correspondent that MINAMI made a state-
22 ment on October 18, 1931, referring to Japan's atti-
23 tude towards an intervention of a third party in the
24 Sino-Japanese dispute (Ex. 2204A, pp. 15759-15760;
25 p. 19862), SHIDEHARA is "quite sure" of the fact that

1 MINAMI never made at any Cabinet meeting such a
2 suggestion as secession from the League of Nations
3 (p. 33657). On the contrary, MINAMI "heartily"
4 agreed with SHIDEHARA on the plan to invite a
5 Commission of Enquiry (MINAMI, p. 20058) which was
6 proposed, after the unanimous approval of the
7 Cabinet, to the League on November 21, 1931
8 (Ex. 57 (p. 6); p. 1694).

9 Note: "We were actively cooperating with
10 the League of Nations at Geneva, and we supplied
11 all the necessary information, and our delegates
12 participated in the debates and discussions all the
13 time. And there was no occasion for MINAMI to say
14 that we should withdraw from the League of Nations"
15 (SHIDEHARA, p. 33657; MINAMI, pp. 19862-19865).

16 10. It is further alleged by the prosecution
17 that the WAKATSUKI Cabinet "was forced to resign by
18 reason of Cabinet opposition to the Manchurian
19 Incident, this resignation being forced by the actions
20 of the defendant MINAMI, who was then War Minister"
21 (Mr. Hammack, p. 816). The prosecution states that
22 "in support of the allegations set forth in Section
23 6 of Appendix A of the Indictment" (p. 807), they
24 "will demonstrate the extent of the power exercised
25 by these defendants over the Government of Japan"

(p. 816). Did they, however, succeed in such a demonstration? According to WAKATSUKI's testimony, his Cabinet was unanimously opposed to any expansion by the army (p. 1557), and since MINAMI was present at almost every Cabinet meeting, he must have agreed in the unanimous opinion of the Cabinet (p. 1571). The direct cause of the fall of the Cabinet was not by any action on the part of War Minister MINAMI, but by the actions of Home Minister ADACHI (p. 1580). SHIDEHARA definitely testified: "It is not true that the WAKATSUKI Cabinet was forced to resign through the action of General MINAMI" (p. 1376). MITARAI testified also to the same effect (p. 17767-17768).

Note: According to SHIDEHARA's testimony, the remote cause was due to difficult financial questions, and the Manchurian Incident aggravated the situation (p. 1344), but "the fact of the matter" was that no agreement of views was reached on the question of Cabinet reorganization (pp. 1342-1343). According to WAKATSUKI, Home Minister ADACHI continued his negotiations with the opposite party, Seiyukai, contrary to the Premier's desire, would not even attend the Cabinet meeting, and refused to resign unless the Cabinet resigned as a whole (pp. 1579-1583). According to defendant SHIRATORI, then Bureau Chief of the

1 Foreign Ministry, SHIDEHARA told him repeatedly at
2 the time of the Cabinet resignation that as far as
3 diplomacy itself was concerned there was no need to
4 quit, that is to say, SHIDEHARA did not consider that
5 diplomatic relations pertaining to the Manchurian
6 Incident had become difficult or impossible (pp. 35057-
7 35058).

8 11. Except the single instance of a decora-
9 tion from Germany (pp. 20016-20017), there is no
10 evidence at all to connect MINAMI with any conspiracy
11 in conjunction with Germany and Italy. If such a
12 diplomatic courtesy could be a proof of the serious
13 charge of conspiracy, there would be many high-ranking
14 officials in America and Europe who would be guilty
15 of the offense of receiving decorations from Japan.

16 12. As the last question of general nature,
17 we shall now examine whether or not MINAMI personally
18 entertained the idea of securing Japan's domination
19 of East Asia and of the world. According to exhibit
20 2207, interrogation of MINAMI, he believed that
21 Asiatics wished to be freed of the yoke of foreign
22 domination (p. 15787; p. 20034), but this does not
23 mean that they wished to exchange it for the yoke of
24 Japanese domination (p. 20036). In other words, he
25 believed in Asia for Asiatics (p. 15787), but not in

1 Asia for Japanese. He believed that Manchukuo was
2 an independent and peaceful area in the Orient, but
3 other countries, such as Burma, the Dutch Indies,
4 China or the Philippines, need not "follow the
5 pattern set in Manchukuo" (p. 20036).

6 As a member of the Privy Council from 1942
7 to 1945, he was "not particularly shocked" by the
8 remark of Premier TOJO on the proposed incorporation
9 of occupied territories into the Great East Asia Co-
10 Prosperity Sphere (Ex. 687A, p. 12076, Minutes of
11 October 12, 1942, p. 20046) nor by the explanation of
12 MORIYAMA, Director of the Legislation Bureau, on
13 International Law (Ex. 1275, Minutes of August 18,
14 1943, pp. 20027-20029). In these days, he was "a
15 sort of a deaf-mute" and "maintained a policy of
16 silence" (p. 20030). In spite of this infirmity,
17 however, he agreed with SUZUKI, Committee Chief, in
18 the opposition to the establishment of the Ministry
19 of Greater East Asiatic Affairs (Ex. 687A, p. 7421,
20 pp. 12093-12094), Minutes of October 20, 1942,
21 pp. 20021-20023), especially to the revision of
22 colonial administration in consequence thereof
23 (Ex. 2435, p. 19797; pp. 20023-20026). On the face
24 value of speeches made by the representatives at the
25 Great East Asia Conference in 1943 (Ex. 2351, Address

by Wan Waithayakon; Ex. 2352, address by Laurel;
1 Ex. 2353, address by Ba-Mo, p. 18021), not only was
2 there nothing wrong with the idea itself of the Co-
3 Prosperity sphere, but it was quite commendable as a
4 policy of international relations. All the Japanese
5 believed in it, MINAMI being no exception, on account
6 perhaps of the strenuous propaganda since the KONOYE
7 Cabinet in 1938 (YAMAMOTO, Vice-Minister of Greater
8 East Asia Affairs Ministry, 1942-1944, p. 17924).
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1 The Greater Japan Political Society, of
2 which MIYAMI was the President for about four months
3 in 1945, had as one of its aims the extension of the
4 said Sphere as outlined by the Government (p. 15,786;
5 p. 20,034), but his understanding of the Sphere did
6 not include India (p. 20,035), because it belonged to
7 a different race. He neither adheres to the viewpoint
8 on Greater East Asia, nor supports the idea that Japan
9 ought to rule over all the nations that make part of
10 the said Sphere (p. 20,046). He regarded any doctrine
11 as entirely wrong, the aim of which was that Japan
12 should rule over the whole world and that the Japanese
13 Emperor should be Emperor of the whole world (p. 20,047).
14 "The idea of ruling the world is an entirely mistaken
15 notion," he testified (p. 20,048). From the above
16 testimony it may be seen that although he was as much
17 influenced by the governmental slogan then prevailing
18 as an ordinary citizen would be so influenced, he never
19 attributed any evil sense thereto, such as the domina-
20 tion of other countries or peoples.

21 Then he became a privy councillor in 1942,
22 the Pacific War was already in full swing. Then he
23 was nominated as President of the Japan Political
24 Society in 1945, there were clear indications of
25 Japanese defeat (p. 20,083). This Society was different

1 from the Imperial Rule Assistance Association or the
2 Imperial Rule Assistance Political Association and had
3 no connection whatsoever with the Government (MITARAI,
4 Ex. 3436, pp. 32,923-32,924). But he led this Society,
5 members whereof held the absolute majority in the Diet
6 (MINAMI, p. 20,088) and amounted to more than 500,000
7 in total of prefectural chapters (MITARAI, p. 32,924),
8 to accept peace under the Potsdam Declaration without
9 resulting in any confusion (MINAMI, p. 20,088). He
10 did his duty as a patriot and as the leader of a
11 political party. What more could be expected of him?
12 We submit, therefore, that MINAMI is innocent of any
13 crime charged in Counts 1, 4, and 5.

15 Note: (1) MINAMI's pet theory was that
16 no military man should participate in politics, but he
17 was prevailed upon to accept the presidency of the
18 Japan Political Society by a committee of influential
19 citizens, especially by the advice of SUZUKI, then
20 President of the Privy Council (MITARAI, pp. 32,924,
21 32,925).

22 (2) On August 9, 1945, MINAMI advanced his
23 opinion to the same SUZUKI, then Premier, that it
24 would be better to seek peace (MINAMI, p. 20,088;
25 MITARAI, p. 32,925). In view of Mr. Keenan's remark
in his opening statement (p. 464), MINAMI's attitude

1 towards the termination of the Pacific War is relevant
2 and material (pp. 20,083, 20,084).

3 PART II. Counts 2, 3, 6, 18, 27 & 28.

4
5 These counts charge MINAMI with conspiracy
6 to secure Japan's domination of Manchuria and of all
7 China and also with the planning, preparing, initiating
8 and waging of illegal wars against China during
9 the respective periods commencing from January 1, 1928,
10 in counts 2, 3 and 6, from September 18, 1931, in
11 counts 18 and 27, and from July 7, 1937, in count 28.
12 As a matter of expediency, our arguments will be divided
13 into the following seven sections:
14

15 Section 1. Prior to the Mukden Incident.

16 Section 2. The Mukden Incident.

17 Section 3. The Crossing of Border by the
18 Korean Army.

19 Section 4. Consular Reports and Governmental
20 Measures.

21 Section 5. Manchukuo Questions.

22 Section 6. North China Questions.

23 Section 7. The China Incident.
24
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Section 1. Prior to the Mukden Incident.

1. It is alleged by the prosecution that "as a result of a previous policy of aggression, Japan, by 1928, had acquired substantial rights and interests in Manchuria. These included: 1. A 99-year lease of the Kwantung Peninsula; 2. A 99-year lease of the S. M. R. (This railway became the quasi-government in the territory which it served); 3. The right to operate other railroads in Manchuria; 4. The right to establish Japanese settlements at Antung, Mukden and Yinkow; 5. The right of priority in the employment of special officials; 6. The right to establish post offices and to operate telephone and telegraph services; 7. The right of priority with respect to mining and forestry; 8. The right to station railway and consular guards. These guards were regular Japanese soldiers. This latter right and the violation of limitation with respect thereto afforded the opening wedge by which large armed forces were congregated in Manchuria to supplement the Kwantung Army in the leased peninsula" (Mr. Darsey pp. 1679, 1680).

It must be pointed out, first of all, that the above-mentioned rights were acquired not "as a result of a previous policy of aggression," but as a

1 result of legitimate agreements between the countries
2 concerned. Even "from the moral point of view" (Mr.
3 Keenan, p. 472), which should be taken into considera-
4 tion in any criminal case, Japan had no guilty mind
5 in the possession and protection of these rights.

6 Note: (1) "The Sino-Japanese war of 1894 -
7 1895 had given Russia an opportunity to intervene,
8 ostensibly on behalf of China, but in fact in her own
9 interest, as subsequent events proved. Japan was forced
10 by diplomatic pressure to return to China the Liaotung
11 Peninsula... In 1896 a secret defensive alliance was
12 concluded between the two countries (China and Russia)...
13 In 1898 Russia secured a lease for twenty-five years
14 of the southern part of the Liaotung Peninsula, which
15 Japan had been forced to give up in 1895, and also
16 secured the right to connect the Chinese Eastern Rail-
17 way at Harbin with Port Arthur and Dalny (now Dairen)
18 in the Leased Territory. Authority was given for the
19 construction of a naval port at Port Arthur. In 1900
20 Russia occupied Manchuria... In Korea Russian pressure
21 increased also. In July 1902 Russian troops appeared
22 at the mouth of the Yalu River. Several other acts
23 convinced Japan that Russia had decided upon a policy
24 which was a menace to her interests, if not to her very
25 existence." (Ex. 57, pp. 33-34, pp. 18,727-18,736)

Under these circumstances who can blame Japan for
1 deeming Manchuria as her "life line"? Who can accuse
2 the Japanese of becoming Russophobes? The subsequent
3 acquisition by Japan of the Russian rights in South
4 Manchuria was nothing but the recovery of what she was
5 robbed in 1895 (ex. 57, p. 39, p. 18,733, 18,734).
6

7 Note: (2) "The Nine-Power Treaty of February
8 6, 1922, in spite of its provisions with respect to
9 the integrity of China and the policy of the "Open Door,"
10 has had but qualified application to Manchuria in view
11 of the character and extent of Japan's vested interests
12 there, although textually the Treaty is applicable to
13 that region. The Nine-Power Treaty did not materially
14 diminish the claims based on these interests, although ...
15 Japan formally relinquished her special rights regard-
16 ing loans and advisers which had been granted in the
17 Treaty of 1915" (Ex. 57, p. 41, pp. 18,736, 18,737).
18 The fact that Japan formally relinquished these two
19 rights is evidence of the recognition by other Powers
20 of her rights not so relinquished (Ex. 2319H, the
21 Chairman's (HUGHES) report at the 6th Plenary Session
22 (February 4, 1922) of the Washington Conference, pp.
23 17,439 - 17,447).
24

25 2. Secondly, the prosecution has left out
from the above list of Japanese rights in Manchuria the

1 following rights of great importance. To quote from
2 the Minutes of the Washington Conference: "It is
3 further to be pointed out that by Article II, III, and
4 IV of the Treaty of May 25, 1915, with respect to
5 South Manchuria and Eastern Inner Mongolia, the Chinese
6 Government granted to Japanese subjects the right to
7 lease land for building purposes, for trade and manu-
8 facture, and for agriculture purposes in South Man-
9 churia, and to engage in any kind of business and manu-
10 facture there, and to enter into joint undertakings
11 with Chinese citizens in agriculture and similar in-
12 dustries in Eastern Inner Mongolia. With respect to
13 this grant, the Government of the United States will,
14 of course, regard it as not intended to be exclusive,
15 and as in the past, will claim from the Chinese Govern-
16 ment for American citizens the benefit accruing to
17 them by virtue of the most favored nation clauses in
18 the treaties between the United States and China"
19 (Ex. 2319H, p. 17,444).

20
21 THE PRESIDENT: We will recess for fifteen
22 minutes.

23 (Whereupon, at 1445, a recess was
24 taken until 1500, after which the proceed-
25 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Brooks.

4 MR. BROOKS: I resume reading at the bottom
5 of page 25: Even if the Chinese Delegation at the Con-
6 ference "reserved their right to seek a solution on all
7 future appropriate occasions concerning those portions
8 of the Treaties and Notes of 1915 which did not appear
9 to have been expressly relinquished by the Japanese
10 Government" (Ex. 2319-H, T. 17,446), that will not ex-
11 cuse the Chinese persecution of the Japanese and Korean
12 residents in Manchuria in violation not only of the
13 provisions of the above-mentioned Treaty, but of the
14 principles of equal opportunity and open door of the
15 Nine-Power Treaty. When we consider the cruel and
16 insidious attitude of the Chinese authorities in spite
17 of all the concessions made by Japan for the benefit of
18 China, we cannot but conclude that it was China, not
19 Japan, who adopted a positive policy prior to 1931
20 and took aggressive actions against legitimate rights
21 of Japan in Manchuria.
22

23 Note: (1) "Mr. Root took the inquiry of
24 Baron KATO to refer to the meaning of the words "admin-
25 istrative integrity" (of Article I of the Nine-Power
Treaty) with reference to their effect upon privileges

1 that had already been granted. He replied that this
2 phrase certainly did not affect any privileges accorded
3 by valid or effective grants; that, on the contrary,
4 respect for the administrative integrity of a country
5 required respect for the things that are done in the
6 exercise of its full sovereignty by an independent
7 State" (Ex. 2319-A, Minutes of the 3rd Committee Meet-
8 ing (November 21, 1921) of the Washington Conference,
9 T . 17,397-17,398).

10 Note: (2) "The fact that restrictions were
11 placed upon the residence, travel and business activ-
12 ities of Japanese subjects in the interior of South
13 Manchuria, and that orders and regulations were issued
14 by various Chinese officials prohibiting Japanese or
15 other foreigners from residing outside the Treaty Ports
16 or from renewing leases of buildings is not contested
17 in the documents officially presented to the Commission
18 by the Chinese assessor. Official pressure, sometimes
19 supported by severe police measures, was exerted upon
20 the Japanese to force them to withdraw from many cities
21 and towns in South Manchuria and Eastern Inner Mongolia,
22 and upon Chinese property owners to prevent them from
23 renting houses to Japanese" (Ex. 57 (p. 53), T. 18,742-3).

24 Note: (3) Innumerable instances of treaty
25 violations by the Chinese were reported to Tokyo, e.g.

1 Ex. 2386, report of February 5, 1919, on the regulations
2 of the Anti-Japanese Society for Confiscation of Japanese
3 Goods (T. 19,156-19,158); Ex. 2387, report of April 24,
4 1919, on a proclamation of the Governor of Tielin Hsien,
5 prohibiting all leases of house-sites to the Japanese
6 (T. 19,161 - 19,163); Ex. 2388, report of August 2, 1929
7 on a law of the North Eastern Political Council, imposing
8 death upon a vendor of land to a foreigner without
9 permission (T. 19,165 - 19,167); Ex. 2511, report of
10 August 14, 1929, on the Association for Expediting the
11 Abolition of Treaties (T. 21,040 - 21,042); Ex. 2389,
12 report of August 19, 1929, on the Regulations of the
13 Governor of Kirin Province, declaring that the Koreans,
14 whether nationalized or not, had no right to acquire
15 or lease land (T. 19,167 - 19,170); Ex. 2390, report of
16 November 8, 1929, on the Regulations of the Board of
17 Construction of the Kirin Province, placing a ban on
18 foreigners to reclaim or cultivate rice fields (T. 19,177);
19 and Ex. 2391, report of June 9, 1931, on a disciplinary
20 law of the Governor of Liaoning Province against sale
21 or lease of land to a foreigner under penalty of death
22 or imprisonment as well as confiscation of the offender's
23 property (T. 19,182 - 19,186).
24

25 Note: (4) SHIDEHARA regretted that his sincerity towards China was not appreciated sufficiently by

1 Chinese Government officials and the Chinese people at
2 large (T. 1,353). If the above state of affairs happen-
3 ed to any other country, would her Foreign Minister be
4 content with the expression of regret and become still
5 more conciliatory? Even the Lytton Report (p. 18)
6 remarks as follows: "Having started upon the road of
7 international co-operation for the purpose of solving
8 her difficulties, as was done in Washington, China
9 might have made more substantial progress in ten years
10 that have since elapsed had she continued to follow that
11 road. She has only been hampered by the virulence of
12 the anti-foreign propaganda which has been pursued" (T.
13 18,688). "China demands immediately the surrender of
14 certain exceptional powers and privileges because they
15 are felt to be derogatory to her national dignity and
16 sovereignty. The foreign Powers have hesitated to meet
17 these wishes as long as conditions in China did not
18 ensure adequate protection of their nationals, whose
19 interests depend on the security afforded by the enjoy-
20 ment of special treaty rights. The realization of
21 China's national aspirations in the field of foreign
22 relations depends on her ability to discharge the
23 functions of a modern Government in the sphere of
24 domestic affairs, and until the discrepancy between
25 these two has been removed the danger of international

1 friction and of incidents, boycotts, and armed inter-
2 vention will continue" (p. 23) T. 18,707).

3 3. Thirdly, referring to the above allegation
4 of the prosecution, it must be pointed out that even
5 after the outbreak of the Mukden Incident, Japan did not
6 violate any treaty limitation with respect to her right
7 to station railway and consular guards, and also that
8 the consular guards were not regular soldiers, but
9 merely policemen (Ex. 2319-B, explanation given by the
10 Japanese Delegates at the 9th Committee Meeting (November
11 29, 1921) of the Washington Conference, T. 17,400 - 17,401;
12 T. 17,402 - 17,405).

13 Note: (1) Ex. 189, Governmental proclamation
14 issued after the Extraordinary Cabinet Meeting of
15 September 24, 1931, states: "It may be added that
16 while a mixed brigade of 4,000 men was sent from Korea
17 to join the Manchurian garrison, the total number of men
18 in the garrison at the present still remains within the
19 limit set by the treaty" (T. 2,244).

20 Note: (2) Ex. 2298, Additional Articles to
21 the Portsmouth Treaty, signed September 5, 1905,
22 Paragraph 3 of Item I, reads: "The High Contracting
23 Parties reserve to themselves the right to maintain
24 guards to protect their respective railway lines in
25 Manchuria. The number of such guards shall not exceed

1 fifteen per kilometre and within that maximum number
2 the Commanders of the Japanese and Russian Armies shall
3 by common accord, fix the number of such guards to be
4 employed, as small as possible having in view the actual
5 requirements" (T. 20,051 - 20,052).

6 Note: (3) KAWABE testified: "For the protec-
7 tion of the approximate 1,000 kilometre length of the
8 railway, Japan had the right to station 15,000 men. In
9 1931, however, our troop strength in Manchuria was the
10 "Independent Garrison Force" under Major General HORI,
11 which was exclusively assigned to guarding of the railway,
12 having the strength of 6 battalions totaling four thousand
13 and several hundred men, and also the Second Division
14 having approximately 5,500 men, under Lieutenant General
15 TAMON, which was stationed in Kwantung-Chow, south of
16 Liavang. The total of these two, amounting to an
17 approximate strength of 10,000, was under the command
18 of Lieutenant General HONJO, the then commander in chief
19 of the Kwantung Army" (Ex. 2408, T. 19,409).

20 Note: (4) Ex. 57 (T. 71) states: "2nd Divis-
21 ion, 5,400 men and 16 field-guns; Railway Guards about
22 5,000 men; Gendarmerie about 500."

23 Note: (5) The reason why Japan did not with-
24 draw the garrison at the time of Russian withdrawal,
25 is stated in Ex. 2319-B, T. 17,400 - 17,401; T. 17,414 -

17,415.)

1 4. It is alleged by the prosecution: "That
2 the high military command of Japan and, in particular,
3 the Kwantung Army were involved in this conspiracy to
4 seize and dominate Manchuria is shown by the fact that
5 within twenty-four hours of the Incident at Mukden large
6 Japanese armies were spreading out over Manchuria. Such
7 immediate action (in view of our knowledge of logistics)
8 must have been preceded by many weeks or months of prepar-
9 ation. This is also indicated by General MINAMI's strong
10 militaristic speech at a conference of Division Command-
11 ers concerning Manchuria and Mongolia August 4, 1931"
12 (Mr. Williams, T. 16,732-16,733).

14 As to MINAMI's speech, we have already discussed
15 it elsewhere (see Part I, par. 6 above). How could it
16 be connected with the immediate action taken by the
17 Kwantung Army on the outbreak of the Incident? Any War
18 Minister in any country would hope his officers would
19 do their duty "in educating and training the troops with
20 enthusiasm and sincerity" (Ex. 186, Part I, T. 2,210),
21 but it is quite another thing to employ the troops for
22 the purpose of aggression. His primary responsibility
23 towards the State is to maintain the whole army in
24 preparedness for emergency, but this does not make him
25 a conspirator, under International Law. Had all wars,

whether for self-defense or otherwise, become impossible
1 and had no more armaments nor War Ministers been required,
2 then we might have been able to accuse MINAMI of a
3 so-called "militaristic speech." We believe, however,
4 that the present Tribunal is not concerned with such a
5 remote conjecture. The only criterion in this case
6 lies, no doubt, in the question whether or not MINAMI
7 overstepped the scope of his duty as War Minister or
8 was negligent in the execution thereof.
9

10 We call special attention to Note 5 and Note 6
11 hereunder.

12 Note: (1) According to ISHIHARA (Ex 2584-A),
13 "at the time when Japan obtained the right to station
14 her troops in Manchuria after the Russo-Japanese War,
15 the Chinese forces in four northeastern provinces were
16 so meager that Japan could manage to defend the far-
17 stretching South Manchurian Railway and also to protect
18 her residents with the small force allowed by the
19 treaty" (T. 22,108). "Chang Hsueh-liang - - - attempted
20 to reorganize his forces and to reinforce their armaments
21 in both quantity and quality, namely, maintenance of a
22 standing strength amounting to 220,000, enlargement of
23 the munitions factory in Mukden, equipping his forces
24 with tanks, airplanes and other modern arms, and
25

strengthening of training systems, etc. They were superior in numbers and equipment to our forces in Manchuria at that time, and were in high spirits with related anti-Japanese sentiments. Their disposition was rearranged into an encircling position so that they besieged those areas occupied by our army along the South Manchurian Railway. In the face of such a challenging attitude, the Kwantung Army scattered in an extensive area was placed in a dangerous position from a military point of view" (T. 22,109 - 22,110; see also ITAGAKI, Ex. 3316, T. 30,257).

Note: (2) Ex. 57 states: "The Manchurian authorities realized that, as before, their power derived much more from their armies than from Nanking. This fact explains the maintenance of large standing armies numbering about 250,000 men, and of the huge arsenal on which more than \$200,000,000 (silver) are reported to have been spent. Military expenses are estimated to have amounted to 80% of the total expenditure" (p. 18,723). Compare the above with Japan's standing army of 17 divisions (see Part I, Par. 2), and its allotment of 180,000,000 Yen out of the total budget of 1,448,000,000 Yen (see Part I, par. 6, Note (1) above).

Note: (3) Ex. 2330-A, the 9th Resolution of the Washington Conference, reads: "Whereas the Powers

1 attending this conference have been deeply impressed
2 with the severe drain on the public revenue of China
3 through the maintenance in various parts of the country
4 of military forces excessive in number and controlled
5 by the military chiefs of the provinces without coordin-
6 ation; and, whereas, the continued maintenance of these
7 forces appears to be mainly responsible for China's
8 present unsettled political conditions, - - - it is
9 Resolved: That this conference express to China the
10 earnest hope that immediate and effective steps may be
11 taken by the Chinese Government to reduce the aforesaid
12 military forces and expenditures" (T. 17,448 - 17,449).
13 Did China ever reduce her forces and expenditures in
14 compliance with this resolution? Compare the Chinese
15 disregard with Japan's steady and conscientious reduc-
16 tions in armaments from 1924 to 1931 (see Part I, par. 2
17 above). Under these circumstances which one should be
18 blamed for a conspiracy of aggression and for the
19 imminence of a crisis in Manchuria, the War Lord who
20 ignored the resolution of the Washington Conference or
21 the War Minister who faithfully observed the retrench-
22 ment policy to such an extent as to even cut down mil-
23 itary officers' salaries?
24

25 Note: (4) ISHIHARA testified: "According

1 to the order and instructions received from the central
2 headquarters of supreme command, preparations for the
3 worst had been made for the preceding several years"
4 (Ex. 2584, T. 22,111). Such instructions did not come
5 from the War Minister, but from the Chief of General
6 Staff, acting on orders from the Emperor and under the
7 scope of operational plans (T. 22,176). The order was
8 not to use force against force, but to prepare for such
9 an eventuality (T. 22,177). "It is the responsibility
10 of the Chief of General Staff to set up operational and
11 strategic plans and the War Minister has no authority
12 concerning this. However, when these plans have been
13 completed, after having first been approved by the
14 Emperor, they are shown to the War Minister" (T. 22,153).
15 On the other hand, it must be noted that the Kwantung
16 Army's proposal to increase the numbers and rearrange
17 its forces was not accepted by the central military
18 authorities (Ex. 2584-A, T. 22,110 (see par. 5 below).

19 Note: (5) According to ITAGAKI (Ex 3316),
20 the Kwantung Army, without getting assistance from the
21 central authorities since the previous year, mapped out
22 a plan of operations, in case of collision, to concen-
23 trate its main force for the delivery of a heavy blow
24 to the nucleus of the Chinese army in Mukden and to
25 make up the shortcomings of the fighting power by

utilizing whatever material which could be found in Manchuria, such as appropriating two guns which became needless as the result of scaling down of the fortifications at Port Arthur. Commander HONJO strictly warned the officers and men against any rash act, but at the same time instructed them to execute their duties positively and decidedly once emergency arose (T. 30,259 - 39,260). ISHIHARA testified: "Diplomatic negotiations should always be conducted in a conciliatory attitude. However, as far as we military men were concerned, it is our duty to see that if the things should come to the worst, we should be prepared for any eventuality." (T. 22,197).

Note: (6) As to the question whether or not the situation on the spot justified such preparedness of the Kwantung Army, we refer to TANAKA's testimony: "It was practically battle conditions, without the declaration of war" (T. 1,958; T. 2,092) and to ISHIHARA's testimony: "The relation between the two forces was on the verge of explosion as if sitting on top of a volcano" (Ex. 2584-A, T. 22,110). If Chinese airplanes, in spite of repeated Japanese protests, continued to carry out demonstration flights over Japanese barracks and residential houses (ISHIHARA, T. 22,147), and if the Japanese railway lines, patrolled by guards 3,000 times

1 per month, were still cut down or otherwise obstructed
2 by the Chinese (KATAKURA, T. 18,887), it would have been
3 idiotic of the Kwantung Army not to be prepared for a
4 further and graver challenge, even without consider-
5 ing all the treaty violations and persecutions rampant
6 everywhere in Manchuria.

7 5. According to ITAGAKI's testimony, who was
8 then a staff officer in charge of general affairs of
9 the Kwantung Army, "the desire of the Kwantung Army to
10 increase its strength, change the disposition of its
11 troops and replete its equipment, was not approved by
12 the central authorities of the army" (Ex. 3316, T. 30,258).
13 ISHIHARA, then a staff officer in charge of operations
14 of the Kwantung Army, testified: "In order to cope with
15 the threatening situation produced by the change of
16 military conditions in general in the northeastern
17 China, the Kwantung Army in the field made a proposal
18 to increase the numbers and rearrange its forces to
19 the central military authorities. However, it was
20 not accepted" (Ex. 2884-A, T. 22,110). This evidence
21 will show, together with exhibit 2202-A, MINAMI's
22 refusal of increasing the divisional strength in Korea
23 (see Part I, Par. 5, above), that the central military
24 authorities had not the slightest idea of aggression
25 towards Manchuria or anywhere else.

Note: (1) In the course of cross-examination
1 of defendant KOISO, the prosecution produced exhibit
2 3376, a letter of July 25, 1931, from MINE, Commander
3 of Military Police of the Kwantung Army, to War Minister
4 MINAMI in reference to a "Study on Organization of MP
5 Force in Manchuria", in which it is stated that in a
6 future war Japan "should secure complete possession of
7 Manchuria and Mongolia from the standpoints of mainten-
8 ance of fighting ability and of self-sufficiency", that
9 the management and administration of Manchuria and
10 Mongolia in the above case is "already being studied
11 by the respective responsible organs", that "if a
12 complete military occupation of a certain area in
13 Manchuria and Mongolia is planned in our future
14 military operations, a minimum force of about 5,000
15 military police (with the addition of some Chinese and
16 Korean military police assistants) besides a part of
17 the occupation area garrison is required in order to
18 maintain peace and order in the said area" and that
19 "the basis of this estimation approves, on the whole,
20 the Study on the Administration of the Occupied Terri-
21 tories in Manchuria and Mongolia", compiled by the
22 Kwantung Army Headquarters (T. 32,303 - 32,305).
23 It must be pointed out, first of all, that exhibit
24 3376, presented to the Tribunal by the prosecution,
25

1 forms only a minor part of the said letter of MINE
2 and that the defense had to supplement the part left
3 out by way of exhibit 3383. When the two exhibits
4 are put together, it will be clear that the purport of
5 the letter lies in the concluding paragraph of exhibit
6 3383, which reads: "We have, in the above, arrived at
7 a plan of organization in peace-time by discussing the
8 number of men required at war-time. Many aspects of
9 the present condition of MP at home and abroad will
10 not meet the demand of operation in future. The same
11 will apply to MP units in Korea and Japan proper. We
12 must, therefore, make further study and investigation
13 and prepare a satisfactory solution for the harmony
14 between the peace-time (organization) and the war-time
15 (organization)" (Ex 3383, T. 32,451). What is, then,
16 MINE's plan of organization? It proposes to establish
17 a Mukden Unit of 300 men, a Chanchun unit of 400 and
18 an Independent Battalion of 400, the Battalion to be-
19 come an educational organ for the supply of men to the
20 other two units (T. 32,448 - 32,449). Thus, 700 will
21 be in active service at Mukden and Chanchun at all
22 times while 400 be released annually in reserve. After
23 ten years, 4,000 reservists and 700 active MPs will
24 make approximately 4,700 (T. 32,450). Considering 15%
25 decrease therefrom and some addition of NCOs thereto,

1 at least more than ten years are required to supply
2 5,000 MPs, supposed to be necessary for the occupation
3 of "a certain area in Manchuria and Mongolia" as
4 mentioned in exhibit 3376 (T. 32,305). Such an idea
5 itself will obviously disprove the existence of any
6 conspiracy to create an incident in Manchuria within
7 a few months from the date of this document. Secondly,
8 according to KOISO's testimony, who was then the Chief
9 of the Military Affairs Bureau, the document does not
10 show any signature or seal of himself or the Vice-
11 Minister or the War Minister, indicating, therefore,
12 that the matter had been disposed of in the lower levels
13 and not submitted to the superiors for any advice
14 (T. 32,444 - 32,445). His recollection is that Colonel
15 ANDO, Chief of Military Service section, told him that
16 "this was MINE's own idea and a highly fantastic one
17 and impossible of execution". Hence, "it was completely
18 shelved and abandoned by the Military Service Section"
19 (T. 32,452).

20
21 Note: (2) Putting together the evidence
22 above-mentioned, we shall arrive at the following
23 conclusions: (a) that many sundry statements of
24 opinion were sent to the central army authorities
25 from the Kwantung Army, but none was approved or
accepted, showing thereby non-existence of a common

1 plan or conspiracy between the two; (b) that such
2 statements of opinion referred sometimes to immediate
3 precautions to be taken in the face of the threatening
4 situation on the spot and sometimes to a study of the
5 occupation of Manchuria and Mongolia, in a future war,
6 but the latter contemplated only an easy-going plan
7 which, if realized, might take ten or more years, show-
8 ing thereby its remoteness from any affairs which
9 occurred in 1931; and (c) that as a matter of fact,
10 neither the policy of the central army authorities nor
11 actions of the Kwantung Army followed the line suggest-
12 ed by the said study, such as military administration
13 of Manchuria and Mongolia, showing thereby its
14 irrelevancy to the actual state of mind of any
15 "responsible organs". In any case, MINAMI cannot be
16 held responsible for all letters received and in which
17 purport he never concurred as proved by subsequent
18 events.
19

20 Note: (3) The mere fact that a letter is
21 addressed to the War Minister or found in the files of
22 the War Ministry does not mean his approval or even
23 perusal thereof. Such a crazy one as exhibit 184 (see
24 Part I, Par. 5, Note: (4) above), has been discovered
25 in the so-called secret diaries of the War Ministry.
Further, it was the routine procedure for any member

1 of the War Ministry to notify his reading or looking
2 at a document by placing his seal or signature on it
3 (KOISO, T. 32,443 - 32,444).

4 6. According to SHIDEHARA's testimony, he
5 received, shortly before the Manchurian Incident,
6 confidential reports and informations that the Kwantung
7 Army was engaged in amassing troops and bringing up
8 ammunition and material for some military purpose,
9 and knew from such reports that action of some kind
10 was contemplated by the military clique (Ex. 156,
11 T. 1,324).

12 This testimony was modified on cross-examina-
13 tion as follows: firstly, the word "report" was not
14 quite correct. What he actually meant was "rumors"
15 and he did not receive anything in the nature of an
16 official report (T. 1,333). As a matter of fact,
17 four or five civilian residents in Manchuria came to
18 him and talked about some war-like preparation being
19 done by young officers on the spot (T. 33,589 - 33,590).
20 Secondly, the words: "Kwantung Army" should be correct-
21 ed as "military clique" (T. 1,319), by which SHIDEHARA
22 did not intend to include MINAMI (T. 1,335). Thirdly,
23 SHIDEHARA talked with Premier WAKATSUKI and War
24 Minister MINAMI about such rumors, but did not take
25 any action himself (T. 1,334). MINAMI, far from

1 offering any opposition to what SHIDEHARA said, was in
2 complete agreement therewith (p. 1,385). MINAMI replied
3 "he would do his level best to maintain discipline among
4 these officers". (T. 33,592). SHIDEHARA was convinced,
5 therefore, that MINAMI did all in his power to cooperate
6 with him (T. 1,334).

7 Note: Exhibit 3739, telegraphic instruction
8 from SHIDEHARA to Consul General HAYASHI at Mukden
9 under date of September 5, 1931, states as follows:

10 "We have heard that Colonel ITAGAKI and others
11 of the Kwantung Army at your place are exerting them-
12 selves in various activities recently with considerably
13 ample funds and are manipulating Japanese adventurers
14 in China and members of the "Kokusui-Kai"; and that in
15 view of the tardy progress of the negotiation regard-
16 ing the NAKAMURA Incident, especially, they have
17 decided on some concrete move around the middle of
18 this month. We hope that it is merely a rumour. Howev-
19 er, in consideration of the appearances of excitement
20 on the part of the despatched military authorities
21 it would be very regrettable from the point of the
22 general situation, if they ruin the position of the
23 Empire by behaving rashly, therefore, please take
24 further deliberate steps for controlling the activities
25 of the Ronin /T.M. adventurers/ and the like. We have

1 conveyed the gist of this telegram to the army also."
2 (T. 37,315 - 37,316). This corroborates SHIDEHARA's
3 testimony that what he received was not an official
4 report but a rumor.

5 7. According to MINAMI's testimony, he heard
6 from SHIDEHARA at a Cabinet meeting shortly before
7 September 18, 1931, of a report that something seemed
8 to be going on in Manchuria. MINAMI replied that he
9 would have the matter investigated, otherwise he would
10 not believe it (T. 19,821). He did not see Consul-
11 General HAYASHI's telegram (Ex. 181, T. 19,827).
12 Incidentally, at that time the Chief of General Staff
13 was despatching TATEKAWA, Department Chief of the
14 General Staff, to Manchuria and MINAMI availed himself
15 of the opportunity to ask TATEKAWA to investigate the
16 matter in the light of the discussion at the Cabinet
17 meeting and of the desire of the War Ministry (T. 19,821,
18 19,823), but did not give him any order or letter
19 (T. 19,825).

20
21 It must be remarked that exhibit 181 referred
22 to by the prosecutor on MINAMI's cross-examination
23 (T. 19,827) is a telegram from the Consul-General in
24 Mukden under date of September 19, 1931, and could have,
25 therefore, no connection with MINAMI's request to
TATEKAWA prior to September 18th. As SHIDEHARA

1 testified, there was no official report at that time,
2 but only rumors (T. 1,333, 33,589 - 33,590). Neverthe-
3 less, MINAMI acted at once for the best (T. 33,592).

4 Note: (1) MINAMI's bona fides is clearly
5 shown even in the testimony of TANAKA, Ryukichi.
6 According to TANAKA, "on the 15th or 16th of September
7 a cable was received by Foreign Minister SHIDEHARA from
8 the Japanese Consul-General in Mukden, reporting the
9 fact that a company commander of a patrol unit in
10 Fushun had said that within a week a big incident would
11 break out. Foreign Minister SHIDEHARA brought this
12 matter to the attention of War Minister MINAMI and
13 strongly protested against the report that he had on
14 hand. As a result, War Minister MINAMI ordered General
15 TATEKAWA to go to Mukden as a special emissary post
16 haste to put a stop to the contemplated action of the
17 Kwantung Army" (T. 2,006).

18 Note: (2) According to KOISO's testimony, it
19 was KANAYA, Chief of General Staff, who sent TATEKAWA
20 to Manchuria (exhibit 3375, T. 32,207). KOISO did not
21 know what kind of instructions TATEKAWA received or what
22 date he departed, but heard from NINOMIYA, Vice-Chief
23 of the General Staff, that TATEKAWA's mission was to
24 advise Commander HONJO to exercise every patience and
25 forbearance whatever might be the developments (T. 32,207,

1 32,324). In the light of the situation within the army
2 and in order to thoroughly have the ideas of the Chief
3 of General Staff and the War Minister understood by the
4 people on the spot, it was necessary to despatch a per-
5 son to carry such detailed instructions (T. 32,325).

6 Note: (3) According to ITAGAKI's testimony,
7 he met and dined with TATEKAWA in the evening of the 18th.
8 TATEKAWA was not inclined to mention his business at that
9 time, except that the superiors were worrying about the
10 careless and unscrupulous conduct of the young officers.
11 ITAGAKI answered that there was no need of worrying,
12 if that was his business (ex. 3316, T. 30,261).

13 Note: (4) According to ISHIHARA's testimony,
14 he heard ITAGAKI reporting to HONJO that TATEKAWA asked
15 ITAGAKI whether the young officers were not extremely
16 excited over the NAKAMURA incident, whereupon ITAGAKI
17 replied that such was not the case. TATEKAWA said he
18 was relieved to hear so and, as he was tired, he would
19 talk about the situation the next day (T. 22,217).

20 Note: (5) According to KATAKURA's testimony,
21 he heard TATEKAWA at a meeting of staff officers of the
22 Kwantung Army on the night of the 19th, stressing that
23 the outbreak of the incident was extremely unfortunate
24 and regrettable and that no matter what the Chinese did
25 or might do, the Kwantung Army should not move its

forces into northern Manchuria (T. 18,905, 18,907).

1 The above event took place more than sixteen
2 years ago and at the time when more important matters
3 accumulated daily. It is only natural that recollections
4 of witnesses differ in some detail, but they are all in
5 accord with the main point that MINAMI did his best, in
6 line with the Government policy of that date, to prevent
7 trouble from arising or developing in Manchuria.
8

9 8. Concerning events prior to the Mukden
10 Incident, the prosecution introduced three excerpts
11 from the so-called HARADA Memoirs. The first is
12 exhibit 3755-A, as "relating to August 23, 1931, and a
13 conversation between MINAMI and Railway Minister EGI,
14 which MINAMI, at page 19,825 - 19,826, said he did not
15 remember at all" (T. 37,568). It is quite natural that
16 he could not recall such a nebulous conversation, even
17 if it did take place as HARADA reported. We cannot
18 understand whom EGI was referring to when he said:
19 "It is outrageous to speak of such things as an expedi-
20 tion to Manchuria - Mongolia, etc." We are certain
21 that it was not MINAMI, because EGI asked him: "Just
22 what is your opinion on this?" If MINAMI "only made
23 very obscure replies on the matter of UGAKI," we may
24 well imagine he could not help it in view of the con-
25 fused questions (T. 37,570).

1 The prosecution next offered exhibit 3756-A of
2 September 4, 1931, as contradicting MINAMI's statement
3 at pages 19,826 - 19,827, which denied the conversation
4 with Finance Minister INOUE (T. 37,570). As a matter of
5 fact, what MINAMI said at page 19,826 is as follows:

6 "Yes, I have frequently discussed matters with Finance
7 Minister INOUE, including the reorganization or reform
8 of the army." And at page 19,827, referring to KOISO's
9 criticism: "No, that is not in my recollection at all."

10 In any case, even HARADA's report shows that MINAMI was
11 in complete accord with INOUE on the plan of armament
12 reduction (T. 37,572), the fact which is corroborated
13 by WAKATSUKI as follows: "As War Minister MINAMI always
14 came to Cabinet meetings and never raised any objection
15 to policies decided by the Cabinet, I do not believe
16 that War Minister MINAMI did anything in opposition
17 to the policy of the Cabinet" (T. 1,583).

18 Thirdly, the prosecution produced exhibit 3757-A
19 of September 14, 1931, and alleged as follows: "at
20 Record pages 19,821 - 19,825, MINAMI, while admitting
21 that TATEKAWA was sent to Mukden by the General Staff
22 and that he had talked with him before he went, denied
23 that he or as far as he knew, KOISO had anything to do
24 with his selection or that he entrusted TATEKAWA with
25 a letter or order from the Emperor or anybody else.

1 He said he was merely sent to investigate" (T. 37,574).
2 We do not consider the points raised by the prosecution
3 as important, for even according to HARADA, it is
4 apparent that MINAMI tried "to take extra precautions
5 in regard to the actions of the Army in Manchuria and
6 Mongolia" and that by his effort the attitude of "the
7 so-called War Councillors, representing the Supreme
8 leaders of the Army" changed completely (T. 37,575 - "n
9 37,576).

10 On the whole, we must say that the HARADA
11 Memoirs contain only rumors and gossips of less
12 reliability than newspaper reports. We demonstrate
13 the fallacy of each and every one of HARADA's informa-
14 tions, so far as MINAMI is concerned, in the notes below.

15 Note: (1) Ex. 3757-B (September 19, 1931):
16 HARADA's allegation, that Premier WAKATSUKI received
17 no reports from MINAMI and that the Army authorities
18 were desirous of making a guarantee occupation
19 (T. 37,577 - 37,578), is completely refuted by exhibit
20 179-I, KIDO's Diary, entry of September 19th, which
21 reads: "At 1:30 the Prime Minister went to see the
22 Emperor. I was told that our Army would not try to
23 enlarge the situation but would stop any further
24 action when it found itself in an advantageous position"
25 (T. 1,936), and by exhibit 179-J, entry of September

22nd, which reads: "The Emperor has expressed satisfaction and approval to the Prime Minister and the Minister of War for the governmental policy to strive not to extend further the Manchurian Incident" (T. 1,938). See also Section 2, par. 1 below (in particular, Note (4)). Further, we cannot understand whom HARADA was referring to when he quoted WAKATSUKI's words: "I asked what they intended doing if . . . something should possibly happen against such a huge opposing force, to which the reply was . . . " (T. 37,578). There is no evidence to show who was asked and who made the reply. Supposing it was MINAMI who made the reply, such a supposition is definitely refuted by exhibit 3422-A, telegram of September 19th, from HAYASHI to HONJO, reporting the forceful suspension by the central army authorities of the intended expedition of the Korean Army (T. 32,833). The stop order was issued to HAYASHI through KANAYA upon MINAMI's request (see Section 3, par. 1 below).

Note: (2) Exhibit 3758-A (September 22, 1931): The whole story therein described by HARADA (T. 37579 - 37,582) is refuted by much evidence shown in Section 3, par. 2. In particular, SHIDEHARA testified that he does not remember any occasion at all of MINAMI expressing a desire in the Cabinet that he should have permission to send troops from Korea into Manchuria

1 (T. 33,636). HARADA was also mistaken in saying that
2 the Cabinet meeting of the 23rd decided the defrayal
3 of expenses, etc., and that the Premier was compelled
4 to report exactly what had happened to His Majesty and
5 after that the War Minister and the Chief of the General
6 staff presented themselves (T. 37,581). There is no
7 doubt that the Korean Army crossed the border on the
8 21st and the Imperial Sanction was granted on the 22nd
9 (Ex. 3423, KANAYA's advice to MINAMI that the Imperial
10 sanction was already delivered to HAYASHI and HONJO
11 under date of the 22nd). It is obvious, therefore,
12 that the said Cabinet meeting took place on the 22nd
13 and that there was no reason for MINAMI to present
14 himself before the Throne on this matter (see Section
15 3, par. 3, Notes (1) - (4) below).

16 Note: (3) Exhibit 3759-A (September 30, 1931):
17 HARADA's hearsay (T. 37,587) is refuted by exhibit
18 3422-H, MINAMI's telegraphic instruction to HONJO of
19 September 24th, not to use military force in Chientao,
20 even if the condition became serious (T. 32,841, see
21 section 4, par. 3, Note (4) below).

22 Note: (4) Exhibit 3760-A (October 1st, 1931):
23 HARADA's hearsay (T. 37,589 - 37,590) is refuted not
24 only by SHIDEHARA's testimony (T. 33,656 - 33,658),
25 but by exhibit 3422-I (telegram of September 25th from

1 MINAMI to HONJO) (T. 32,844); exhibit 286 (telegram of
2 November 1st from SHIDEHARA to KUWASHIMA, T. 4,355 -
3 4,359, language corrections at T. 36,164 - 36,165);
4 exhibit 299 (telegram of November 15th from MINAMI to
5 HONJO, T. 4,391 - 4,393); and exhibit 3433 (affidavit
6 of Patrick J. Hurley), all of which deny conclusively
7 such an allegation as MINAMI ever proposed the secession
8 from the League of Nations (see Part I, par. 6; Part II,
9 section 4, par. 4, 11 and 13).

10 Note: (5) Exhibit 3761-A (October 22nd, 1931):
11 HARADA's hearsay (T. 37,591 - 37,592) is refuted by the
12 same evidence as referred to in Note (4).

13 Note: (6) Exhibit 3779-A (November 30, 1935):
14 This story of HARADA shows MINAMI's resolution not to
15 despatch troops beyond the border of Manchukuo without
16 an Imperial Command (T. 37,674 - 37,675); and that is
17 all there is to it (see section 6 below).
18

19 Section 2. The Mukden Incident.

20 1. It is alleged by the prosecution: "At
21 the time of the Mukden Incident the accused MINAMI was
22 War Minister. He claimed to know nothing of the
23 activities of the Kwantung Army and the troops from
24 Korea who were spreading over Manchuria. He claimed
25 he could not control them. It is significant, however,

1 that no action to control the supply of money, material
2 or reinforcements to those armies was undertaken by
3 MINAMI" (Mr. Williams, T. 16,733 - 16,734).

4 It is true that MINAMI knew nothing about the
5 Mukden Incident until he was suddenly awakened at about
6 3 a.m. on September 19th by an officer on duty in the
7 War Ministry and handed a telegram from the Special
8 Service Organ in Mukden (Ex. 2435, T. 19,770 - 19,780).
9 But when he realized what happened he at once called
10 his subordinates for conference, reported the matter
11 by telephone to Premier WAKATSUKI, Foreign Minister
12 SHIDEHARA and others, requesting the immediate convening
13 of an extraordinary Cabinet Meeting (T. 19,780), and
14 sent KOISO, Chief of Military Affairs Bureau, to the
15 General Staff for liaison (T. 19,780 - 19,781). The
16 opinion of the General Staff strongly favored the
17 despatch of reinforcements for operational reasons
18 and it took some time before the two parties came to
19 an agreement, deciding upon the policy of non-expansion
20 (T. 19,781).

21 Note: (1) According to MINAMI's testimony,
22 what they feared more than anything else was "whether or
23 not the lengthy railway line, the 200,000 Japanese
24 residents and 1,000,000 Koreans in Manchuria could be
25 protected with the small Kwantung Army of 10,000 men

1 in the face of the formidable army of Chang Hsueh-liang
2 numbering 250,000. If an incident similar to the
3 Nikolaievsk Incident, involving the massacre of
4 several hundreds of Japanese residents in Nikolaievsk
5 by Russians in 1920, were to be repeated, it would be
6 a serious matter and the army would be charged for
7 negligence in the proper performance of its duties
8 to the people" (T. 19,781).

9 In the face of the telegraphic reports from
10 Mukden, saying that Chinese troops destroyed the South
11 Manchurian Railway lines, attacked the guards, and
12 clashed with garrison troops (exhibit 3421-A, T. 32,826)
13 and in view of the acute situation prevailing in Manchur-
14 ia as well as traditional atrocities committed by Chinese
15 soldiers and bandits, who could blame the army author-
16 ities, even if they decided to despatch reinforcements
17 there and then? ISHIHARA testified: "Reports reaching
18 us from the front line must be accepted as of the
19 greatest accuracy. When a war is actually in progress
20 it is not given to us to investigate further than
21 actual reports which we may receive from the front line"
22 (T. 22,220), and "there was no necessity to verify"
23 such reports (T. 22,226). It was a question of life
24 and death for a million Japanese and Koreans and the
25 officers on the spot had to decide without a moment's

hesitation. But MINAMI, as a Cabinet Minister, was far
1 more cautious, and not only upheld the policy of non-
2 expansion from the beginning (KOISO, Ex. 3375, T. 32,216;
3 KAWABE, Ex. 2408, T. 19,412) but sent ANDO, Chief of
4 Military Service Section, to Manchuria to make a thor-
5 ough investigation as to the cause of the Incident
6 (MINAMI, T. 19,830).

Note: (2) ANDO arrived at Mukden on September
8 22nd (KATAKURA, T. 18,930, T. 19,089) and after a thor-
9 ough investigation on the spot, left for Tokyo on
10 September 27th (T. 18,940 - 18,941). At the extraordinary
11 Cabinet meeting held in the morning of the 19th, the
12 policy submitted by MINAMI was adopted unanimously.
13 Premier WAKATSUKI and Chief of General Staff KANAYA
14 in turn reported the decision to the Throne and obtained
15 the Imperial Sanction (Ex. 2435, T. 19,781).

Note: (3) According to SHIDEHARA's testimony,
18 he received a telegram from Consul-General HAYASHI at
19 Mukden referring to the explosion of the railway by
20 the Chinese troops and their clash with the Japanese
21 garrison, the telegram, which he read at the Cabinet
22 meeting, was similar to the one received by MINAMI
23 from the Kwantung Army. As these reports were very
24 brief, the situation was too obscure for the Government
25 to make any judgment at that time (Ex. 3479-A, T. 33,550).

1 MINAMI did not know of the Incident and stated that he
2 would investigate the matter and make a written report,
3 which was, in fact, submitted on September 20th to the
4 Cabinet. MINAMI gave proper instructions to his sub-
5 ordinates in accordance with the non-expansion policy
6 of the Cabinet, although "the Cabinet had no authority
7 to give orders to the War Minister" (T. 1,388 - 1,389).
8 Notwithstanding the fact that SHIDEHARA received reports
9 from Japanese consuls in Manchuria concerning the move-
10 ments of the Kwantung Army both before and after such
11 movements were taken (T. 1,375 - 1,376), he had no
12 direct means of investigating the Incident and, there-
13 fore, the only information obtainable came through the
14 War Minister's report (T. 1,338). It was on this basis
15 that the Japanese report was made to the League of
16 Nations. "Very honestly speaking", the Cabinet by
17 no means had any idea of territorial expansion, and the
18 Governmental proclamation of September 24th was issued
19 accordingly (T. 1,339). As a matter of fact, it was
20 MINAMI who first "declared that the central army author-
21 ities (the General Staff and the War Ministry) should
22 make every effort to prevent the expansion of the
23 Incident, although the action of the Kwantung Army
24 originated from its proper aim of guarding the railway."
25 (Ex. 3479-A, T. 33,551).

1 Note: (4) In the above testimony, SHIDEHARA
2 forgot that the army authorities had decided upon the
3 non-expansion policy as early as 9 a.m. of the 19th
4 (KAWABE, Ex. 2408, T. 19,411) and the Cabinet meeting
5 held one hour later only approved it. Exhibit 189, the
6 Governmental proclamation above referred to by SHIDE-
7 HARA, expressly states: "The Japanese Government at a
8 special Cabinet meeting September 19th took decision
9 that all possible efforts should be made to prevent
10 aggravation of the situation and instructions to that
11 effect were given to the Commander of the Manchurian
12 garrison" (T. 2,243). According to WAKATSUKI, "the
13 Cabinet . . . expressed the desire to the aforesaid
14 War Minister MINAMI that the affair be terminated at
15 once. To this the aforesaid General MINAMI agreed"
16 (Ex. 162, T. 1,554 - 1,555). This does not show the
17 true picture which MINAMI played in the Cabinet Meet-
18 ing of the 19th, for decision on his part had already
19 been made to limit the incident, to which decision the
20 Cabinet gave approval.

21
22 2. It must be pointed out in this connection
23 that the central army authorities decided upon the non-
24 expansion policy, not because they thought that the
25 Kwantung Army exceeded the limit of self-defense, or
was doing anything wrong, but because MINAMI's sincere

1 desire for peace and KANAYA's study of the Chinese
2 attitude brought them to this conclusion. Exhibit
3 3421-A quotes MINAMI's telegraphic instructions to
4 HONJO as follows: "Referring to the recent clash
5 between Japanese and Chinese troops, the Imperial
6 Government decided to make every effort to avoid ex-
7 tension of the situation, even though the Chinese troops
8 must be blamed for producing its cause by destroying the
9 South Manchurian Railway lines. The Cabinet requests
10 you, therefore, to act in accordance with this principle"
11 (T. 32,826). The telegraphic order of Chief of General
12 Staff KANAYA is quoted as follows: "In view of the
13 Chinese attitude, etc., since the outbreak of the
14 incident, the Cabinet has decided not to go behind what
15 is necessary in dealing with the incident. The Army
16 should, therefore, conform with this principle in its
17 action" (T. 32,827).

18
19 Note: (1) The use of words in the two tele-
20 grams clearly denotes the fact that the War Minister
21 could only request the Kwantung Army to refrain from
22 further actions while the Chief of General Staff had
23 the authority to so order.

24 Note: (2) "From this time on the military
25 operations of the army on the spot came under the
jurisdiction of the Chief of the Army General Staff as

1 an exercise of the prerogative of the Supreme Command"
2 (MINAMI, Ex. 2435, T. 19,782).

3 Note: (3) According to UGAKI's testimony,
4 the military movements and actions overseas came under
5 the command of the Chief of General Staff, who held the
6 highest position next to the Emperor himself as regards
7 the Supreme Command (T. 1,620 - 1,623).

8 Note: (4) It is clearly stated in the
9 Regulations of the General Staff Office (Ex. 78) as
10 follows:

11 "Art. 1. The General Staff Office is the
12 place to supervise national defense and logistics.

13 "Art. 2. A general or a lieutenant-general
14 is appointed by the Emperor to the post of the Chief of
15 the General Staff, and is placed under the direct
16 command of the Emperor, attends the war council, takes
17 charge of the formation of plans for national defense
18 and strategy, and supervises the General Staff Office.

19 "Art. 3. The Chief of the General Staff super-
20 vises those military officers who occupy the posts of
21 staffs, and takes charge of their education and
22 superintends the Military Staff College and the Land
23 Survey Department" (T. 19,509 - 19,510). On the other
24 hand, the Regulations governing the Organization of
25

the War Ministry (Ex. 74) reads as follows:

1 "Art. 1. The War Minister supervises the
2 military administration of the Army, leads and controls
3 officers and civilians in the military service, and
4 superintends various departments under his charge"
5 (T. 17,487).
6

7 Note: (5) According to TOJO's testimony,
8 "the War Minister controls officers, soldiers and
9 civilians attached to the army, that is, he supervises
10 the status of the officers and men and civilians in the
11 field. However, responsibility for any acts done by
12 officers and men or civilian employees of the army
13 after they have been organized and placed under the
14 supervision and control of the high command falls under
15 the responsibility of the high command, that is to say,
16 the Chief of the General Staff." (T. 36,819).
17

18 3. According to the prosecution's allegation:
19 "That the Mukden Incident was a planned one is shown
20 not only by the evidence concerning the plot to which
21 reference has already been made (see Note I below), but
22 is also strongly indicated by the written report of the
23 League of Nations Committee, the testimony of the witness
24 John B. Powell, the report of Consul General HAYASHI
25 to Foreign Minister SHIDEHARA, and the testimony of

the witness MORISHIMA" (Mr. Williams, T. 16,733).

Note: (1) The prosecution quotes exhibit 2182-A, excerpt from OKAWA's book, published on August 20, 1943; exhibit 177, excerpt from HASHIMOTO's book, published in 1936; exhibit 2177-A and exhibit 2178-B, excerpt from the records of OKAWA's trial in 1934; and exhibit 186, a report of the Japan Times on MINAMI's speech in August, 1931 (Mr. Williams, T. 16,727 - 16,733), as "the evidence concerning the plot". They are, however, nothing but opinions and hearsay and do not show any alleged connection or alleged complicity in the alleged plot by MINAMI.

Note: (2) The Lytton Report (Ex. 57) sets forth both Japanese and Chinese versions and does "not exclude the hypothesis that the officers on the spot might have thought they were acting in self-defense" (T. 1,708). The Lytton Commission arrived at Tokyo in February, 1932, stayed in Manchuria only for six weeks and undertook the drafting of the Report at Peiping after July, 1932 (Ex 57 (pp. 10-12)). The Report refers vaguely to MINAMI's "vigorous speeches" without any support of evidence (see Part I, Par. 6, above).

Note: (3) With regard to Powell's testimony, the President remarked: "Apart altogether from the

1 reference to atrocities, this witness has given a
2 number of details which might have led somewhere but
3 which amounted to nothing" (T. 3,222). "You understand,
4 the world heard these allegations. We are here to get
5 the evidence that supports the allegations and you
6 are giving us the allegations over again" (T. 3,224).

7 Note: (4) As to TANAKA's statement that
8 "the Mukden Incident was a planned incident" (T. 1,965)
9 and OKADA's statement that "the plot for the Manchurian
10 Incident was carried out by several younger officers
11 of the Kwantung Army" (T. 1,915 - 1,916), they are all
12 hearsay, gathered some years after the event.

13 Among the prosecution evidence above mentioned,
14 the only ones worth considering will be the three
15 telegrams of HAYASHI on September 19, 1931, and the
16 testimony of MORISHIMA on account of the positions
17 which they held at the time in question.

18 4. Exhibit 181 (the first telegram of HAYASHI)
19 reports: (a) TATEKAWA's arrival at Mukden on the
20 18th by 1 p.m. train; (b) KIMURA's talk that the
21 army authorities forbade trackmen's approach to the
22 spot of explosion; and (c) HAYASHI's observation that
23 the recent incident was wholly an action planned by
24 the Army (T. 2,198 - 2,199). We have already dealt
25

with the question of TATEKAWA's trip to Manchuria (Part
1 II, Section 1, par. 7 above). The testimony of MORISHIMA
2 that TATEKAWA was traveling "secretly" in civilian
3 clothes (T. 3,019 - 3,020) does not amount to anything,
4 in view of the testimony of KATAKURA that "it was as a
5 matter of custom to travel outside of the railway zone
6 in Chinese or in civilian clothes (T. 18,887). As to
7 the talk of KIMURA (a director of the South Manchurian
8 Railway), it would be quite natural for the army author-
9 ities to take such a precautionary measure since the
10 fighting in the neighborhood did not cease at least
11 until 7 a.m. of the 19th, according to the Chinese
12 version (Ex. 57, p.70).

14 Now, HAYASHI's observation on the incident was
15 certainly a serious charge against the Kwantung Army,
16 although he had apparently no evidence thereof other
17 than those stated in MORISHIMA's testimony, i.e.,
18 that the Army had moved a large gun from Hai-chang
19 to the Infantry barracks in Mukden and that the Army
20 in Fushun had planned a maneuver which contemplated
21 the occupation of Mukden, leaving Fushun at 11:30 p.m.
22 the night of September 18th (Ex. 245, T. 3,019 - 3,020).
23 SHIDEHARA must have discussed this matter with MINAMI,
24 for Colonel ANDO was immediately dispatched to
25 Manchuria to make a thorough investigation (see section

1 2, par. 2, Note (2) above).

2 Note: (1) MINAMI testified that SHIDEHARA
3 kept him informed from time to time of the reports
4 received from the Consuls in Manchuria and China
5 (T. 19,821). But the discussion was made in a more
6 or less informal round-table fashion, SHIDEHARA asking:
7 "Now, what do you think about it?", without showing
8 any telegram (T. 19,828). MINAMI did not see HAYASHI's
9 telegram, exhibit 181 (T. 19,827).

10 Note: (2) MINAMI testified that it was only
11 after the outbreak of the Incident and after he had the
12 incident investigated by ANDO that he learned for the
13 first time of the installation of the artillery
14 (T. 19,875 - 19,876). These two guns had been at Port
15 Arthur for a long time since the Russo-Japanese War
16 (T. 19,877).

17 Note: (3) ISHIHARA testified that the mount-
18 ing of the two guns was a matter that had been decided
19 back in 1929 before Colonel ITAGAKI came (T. 22,186).
20 It was ordered by Commander HISHIKARI (T. 22,185). See
21 also ITAGAKI's testimony (Section 1, par. 4, Note (5)
22 above).

23
24 Note: (4) ISHIHARA testified that in August,
25 1931, after the arrival of HONJO as Commander, a new
plan was set up as to the seizure of air fields and the

2

Mukden arsenal in case of emergency and the company stationed at Fushun was assigned to take part therein. KAWAKAMI, Captain of the company, was to leave for Mukden on September 18th, notifying this plan to the police and ex-service men. This report was sent to the Foreign Office and caused a considerable embarrassment to the Army. KAWAKAMI's date of September 18th was purely a coincidence and, as a matter of fact, when the incident actually broke out on that day, KAWAKAMI, forgetting to attack the airfield in accordance with this defense-plan, rushed to Mukden with his forces in a very incomplete state of armament (T. 22,140-22,142; T. 22,232 - 22,234).

Note: (5) KATAKURA testified that the South Manchurian Railway officials were much surprised when they heard a remark of KAWAKAMI that on or about September 16th or 17th a very acute situation might result, depending upon the Chinese move on the return of an investigation squad, referring to the NAKAMURA case. On personal inquiry by one of the South Manchurian Railway directors, it was learned that there was nothing in the offing. Consul-General HAYASHI, however, sent a letter to HONJO and also reported to Tokyo, exaggerating KAWAKAMI's alleged remarks and actions.

1 on September 20th, MIYAKE, Chief of Staff, and KATAKURA
2 called on HAYASHI, to whom the matter was fully
3 explained (T. 18,833).

4 5. Exhibit 181, Part I, and exhibit 2193 (the
5 second telegram of HAYASHI) reports: (a) HAYASHI's
6 telephone talk to an officer, presumably ITAGAKI, urging
7 the matter be handled through diplomatic channels, be-
8 cause of the Chinese proposal of non-resistance; and
9 (b) the officer's reply as to the Army's intention of
10 seeing it through, because of the Chinese attack on
11 the Japanese Army (T. 2,179 - 2,180; T. 15,735 -
12 15,736; MORISHIMA, Ex. 245, T. 3,021 - 3,022). It may
13 be true that HAYASHI believed in the Chinese non-resist-
14 ance, but the same will be said with regard to the
15 officer's belief of the Chinese attack. However,
16 KANAYA's telegraphic order of September 19th shows
17 that the General Staff was not unaware of the Chinese
18 attitude (Ex. 3421-A, T. 32,827; see Section 2, par. 2
19 above).

20 Note: (1) According to ITAGAKI's testimony,
21 he told HAYASHI that the incident was different from
22 its predecessors, because the regular Chinese Army
23 challenged the Japanese Army and, as the fighting was
24 already under way, it was impossible for the present
25 to separate them. Chao Hsin-Po, who announced the

1 proposal, was a civilian official, having no apparent
2 influence in military affairs, and the proposal itself
3 was susceptible of being a Chinese trick due to such
4 suspicious circumstances (T. 30,265-30,266; KATAKURA,
5 T. 18,935).

6 Exhibit 181, Part 2 (the third telegram of
7 HAYASHI), reports: (a) the planning of the Army to
8 start positive operations simultaneously throughout
9 the various places along the South Manchurian Railway
10 zone; (b) HAYASHI's effort of calling HONJO's attention
11 through UCHIDA, President of the South Manchurian Rail-
12 way; and (c) HAYASHI's desire that the Government would
13 take necessary steps to stop the Army's action (T.2,183).
14 It must be noted, however, that the central army author-
15 ities already decided upon the non-expansion policy
16 at 9 a.m. the morning of the 19th (KAWABE, Ex. 2408,
17 T. 19,411; MINAMI, Ex. 2435, T. 19,781; KOISO,
18 Ex. 3375, T. 32,216 - 32,217). This fact will show
19 that they were not influenced by HAYASHI's reports in
20 arriving at the aforesaid decision and that their
21 intention to localize the incident must have been
22 sincere.
23

24 Note: (2) The fact that the central army
25 authorities were sincerely resolved to limit the
actions of the Kwantung Army within the scope of

1 legitimate self-defense will be proved, among others,
2 by exhibit 3421-A, telegrams of September 19, 1931
3 to HONJO from MINAMI and KANAYA (see Section 2; par. 2
4 above). Because of this sincerity, the General Staff
5 was exasperated by HAYASHI's reports such as the
6 above-mentioned. Exhibit 3422-B, telegram of September
7 20th, from NINOMIYA, Vice-Chief of General Staff, to
8 MIYAKI, Chief of Staff of Kwantung Army, says:

9 (a) the General Staff agreed to the Cabinet policy
10 of non-expansion; (b) but the Kwantung Army would not
11 be restricted in taking necessary actions for self-
12 defense; (c) attention should be paid not to give any
13 cause for reproach upon the Army; and (d) the source
14 of rumors should be investigated and unpatriotic acts
15 be eliminated (T. 32,535 - 32,536).

16
17 6. The fact that MINAMI sent ANDO (Chief of
18 Military Service Section of the War Ministry to
19 investigate on the spot the serious charge above
20 mentioned is corroborated by the testimony of KATAKURA,
21 who states that ANDO made inquiries on the following
22 four questions, i.e., (a) referring to the Fushun
23 company case; (b) referring to the non-resistance
24 of the Chinese troops; (c) referring to the offensive
25 attitude of ITAGAKI to HAYASHI; and (d) referring to
the swift action and preparedness of the Kwantung Army

1 T. 18,931 - 18,932).

2 As to the Fushun case, besides the testimonies
3 of ISHIHARA and KATAKURA (see Section 2, par. 4,
4 notes (4) and (5) above), Ex. 3422-E (telegram of
5 September 23rd from MIYAKE, Chief of Staff, Kwantung
6 Army, to SUGIYAMA, Vice-Minister of War, and NINOMIYA,
7 Vice-Chief of General Staff), shows the Kwantung Army's
8 assurance to the central authorities (a) that they
9 should have no anxiety whatsoever as the incident had
10 absolutely no connection with the Fushun case, reported
11 by Consul-General HAYASHI to Foreign Minister SHIDEHARA;
12 and (b) that details had been explained to ANDO
13 (T. 32,839).

14 As to the Chinese non-resistance, HONJO asked
15 ANDO to see personally the actual scene of the fight-
16 ing, submitting to him also a report of an investigation
17 on the spot, conducted by OYAMA (Chief of Legal Affairs
18 Section, Kwantung Army) and others (KATAKURA, T. 18,935-
19 18,940; OYAMA, Ex. 2423, T. 19,617 - 19,628).

20 As to ITAGAKI's attitude towards HAYASHI,
21 ITAGAKI himself, in the presence of HONJO, made an
22 explanation to ANDO (KATAKURA, T. 18,938).

23 As to the swift action of the Kwantung Army,
24 exhibit 2403, HONJO's written statement in anticipation
25 of his death, describes the situation as follows:

"Receiving an urgent dispatch . . . I immediately

1 issued the necessary order to the forces under my com-
2 mand stationed at various points to use force. This
3 was done without having enough time to ask instructions
4 from headquarters" (T. 19,258). ". . . it was evident
5 that not only the South Manchurian Railway but also
6 our army, residents and interests would have been ruined
7 if the army had idly hesitated. This was the reason
8 why I issued to the units under my control orders to
9 use force without asking for instructions from head-
10 quarters, with the responsibility and right which had
11 been naturally given to me". He believed that no
12 matter what country it might belong to, this was in
13 keeping with the character of any army inferior in
14 strength called upon to defend itself against a far
15 superior force (T. 19,261).

16 Note: (1) MINAMI testified that a commander
17 of the Kwantung Army had the privilege to take any
18 action he saw fit within the scope of his authority
19 or within the jurisdiction of his own area and had had
20 it for over 25 years (Ex. 2207-A, T. 15,785 - 15,786;
21 T. 19,832).

22 Note: (2) KATAKURA testified that in view
23 of the inferior strength of the Kwantung Army, a care-
24 ful operational planning and a high degree of training
25 existed, but as a matter of fact, the attitude of the

1 Commander had twice changed and the movements of
2 troops would not be carried out as desired (T. 18,939),
3 and that the action, taken by the Kwantung Army at the
4 outbreak of the Incident, came as a result of the
5 personal decision of Commander HONJO (T. 19,086).
6 There was no instruction from Tokyo in advance or previous
7 to the Incident (T. 19,087).

8 Note: (3) According to ISHIHARA's testimony
9 (Ex. 2584), HONJO, though a man of mild character,
10 used to take a wide view of things, to take the whole
11 responsibility for his duties abroad, and to issue
12 orders or point out the general principles (T. 22,126 -
13 22,127). The Kwantung Army often did not hesitate to
14 make positive suggestions to the central authorities
15 and sometimes had heated arguments with them, but it
16 had never acted against an Imperial order or instruction
17 so long as the Supreme Command was involved. The
18 actions taken by HONJO without asking instructions from
19 the central authorities were the following two:
20 (a) The movement of the main forces of the Kwantung
21 Army at the sudden outbreak of the Mukden Incident, and
22 (b) The bombing of Chinchow on October 8th (T. 22,127).
23 ISHIHARA regrets, however, that there were very many
24 points on which the actions taken by the Kwantung Army
25 did not coincide with the policies of the central

1 authorities (T. 22,149).

2 Amidst an atmosphere of perturbation and
3 anxiety created by anti-Japanese activities, a single
4 spark would suffice to bring about the entire conflagration (Section 1, par. 4, Note (6) above). As the
5 news of the clash at Mukden flashed through the South
6 Manchurian Railway line, every single soldier in the
7 railway garrison felt simultaneously that, in order
8 to forestall imminent disaster for him and for his
9 compatriots, the opponents must be swiftly halted and
10 disarmed before they completed setting their huge war
11 machine in motion. Such was a natural and instinctive
12 reaction of one who had been, for a long time, subjected
13 to an apprehension of danger under the persistent manifestation of malice on the Chinese side (see Section 1,
14 par. 2, Notes (2) and (3); Ex. 57 (p. 30), Ex. 2396 and
15 Ex. 2397 (T. 19,210-19,214). It was to ward off the
16 menacing blow that the Japanese acted swiftly. No
17 thought of conquest or aggression could have entered
18 in his mind at that moment. HONJO's order to use
19 force without asking for instructions from the General
20 Staff headquarters was based on this honest belief of
21 self-defense, in which belief there was, in fact, no
22 difference between the Commander and his men.
23
24
25

Note: (4) ISHIHARA believes that especially

1 the enlisted men who actually participated in guard
2 duty were keenly aware of the situation (T. 22,200).

3 7. In connection with the above, MINAMI
4 testified: "I thought that the action taken at the
5 outbreak of the Incident was not a treaty violation
6 but an unavoidable exercise of the right of self-defense.
7 After it expanded, that is another question; but I still
8 so believe now" (T. 19,883). That is why he approved
9 of the action which HONJO took (Ex. 2207, T. 15,786;
10 T. 19,918) and also why he exerted his utmost to
11 have HONJO follow the policy of non-expansion and
12 non-aggravation (T. 19,834).

13 "HONJO was under the Minister of War in
14 connection with the matters pertaining to military
15 administration. But with respect to operations and
16 disposal of troops, he was under the command of the
17 Chief of the General Staff" (T. 19,917). The War
18 Minister was not a superior officer to the Commander,
19 but he had the right to take part in the disposition
20 of matters with regard to personnel, discipline, morals
21 and expenditures (T. 20,054). Although the War
22 Minister had no right to punish the Commander (T. 20,055),
23 MINAMI said he might control or restrain the latter's
24 action, in case such action was contrary to the
25 Government policy, by denying future supply (T. 20,053-
20,054) or by recalling the latter (T. 19,918;

1 T. 20,055). This was theoretical; no such authority
2 actually existed or had been practiced.

3 According to his testimony, MINAMI did not
4 take any such measure towards HONJO, because MINAMI
5 believed: (a) the Incident, being an unexpected and
6 sudden one, HONJO carried out his duties and exercised
7 the right of self-defense (T. 20,055); (b) the Kwantung
8 Army was acting, as much as possible, in accordance with
9 the Government policy (T. 20,056); (c) that Army
10 Commanders should be trusted on matters within their
11 authority to follow Government policy and that advice
12 or orders would be implicitly complied with (T. 19,916);
13 (d) the result of all investigations, conducted by
14 ANDO, HASHIMOTO, Toranosuke, SHIRAKAWA and NINOMIYA,
15 disclosed that the rumors afloat in Japan were without
16 foundation, such as, that the army on the spot was
17 ignoring the policy of the central authorities or
18 that the younger officers in the Kwantung Army were
19 treating the Commander as a robot or that ITAGAKI,
20 ISHIHARA and other staff officers were taking arbitrary
21 actions (T. 20,060 - 20,062); and (e) the military
22 situation did not permit MINAMI to do so, even if he
23 wanted to (T. 19,833). We shall discuss this question
24 further in Section 3 and 4.

25 Note: (1) According to MINAMI's testimony,

1 HONJO could do what he liked, within the scope of his
2 authority (T. 19,832), but he acted in accordance with
3 the orders of the Central authorities in so far as it
4 was possible. However, because the enemy was so large
5 in number and because they frequently made surprise
6 attacks, a situation was created wherein there could be
7 nothing but extension of hostilities. HONJO's actions
8 were done unavoidably in view of the situation in the
9 enemy camp (T. 19,833). The fact that he was acting in
10 accordance with the Government policy was recognized both
11 by the Government and by the Supreme Command (T. 20,056).

12 Note: (2) According to MINAMI's testimony,
13 he heard on or about September 20th, rumors from
14 WAKATSUKU, SHIDEHARA and others that young staff
15 officers had almost completely ignored the Commander
16 and tried to run things as they pleased (T. 19,872),
17 though he did not hear such ones as HAYASHI's life was
18 in danger, because the Army considered him an obstacle
19 (T. 19,873), or HONJO was in a state of restriction to
20 quarters, or ITAGAKI, ISHIHARA and HANAYA were the
21 center of activities in Manchuria, or the Chief of Staff
22 was unable to control them, or these three men boasted
23 that the plot was planned long ago (T. 19,873 - 19,874).
24 MINAMI also rejected these rumors (T. 19,874) as he
25 believed they were not true (T. 19,875). DOIHARA,

1 ITAGAKI and ISHIHARA were under HONJO and all of them
2 were loyal to their duties and did not engage in any
3 activities of their own will and acted under HONJO's
4 control. It was necessary for MINAMI to supervise
5 HONJO only so far as military administration was con-
6 cerned. MINAMI theoretically could have recalled them,
7 but he did not recognize the need because of his belief
8 that they were acting in line with their original
9 authority (T. 19,918).

10 Note: (3) Exhibit 3421-A quotes the telegram
11 of the Chief of the General Staff to HONJO under date
12 of September 19th as follows: "I believe that the
13 resolutions and measures taken by the Commander of the
14 Kwantung Army since the night of September 18th are
15 appropriate to the occasion and have enhanced the prest-
16 ige of the Japanese Army" (T. 32,827).

17 Note: (4) According to MINAMI's testimony,
18 he spoke with sincerity when he told the Cabinet
19 that he was going to stop HONJO. He exerted his
20 utmost to have HONJO follow the policy of non-expansion.
21 The Kwantung Army was ordered to protect the South
22 Manchurian Railway lines and other important portions
23 along the line, but not to go north beyond Kirin,
24 Changchun or Chengchiatun, or west of the Liao River
25 (T. 19,834).

Note: (5) According to SHIDEHARA's testimony,
1 to stop financial supplies to the Kwantung Army was not
2 discussed at any Cabinet Council. The budget had been
3 approved by the Diet before the Manchurian Incident
4 broke out (T. 33,633). No question of supplementary
5 budget was discussed at the Cabinet (T. 33,634). The
6 War Ministry could find ample means of expenditures
7 within the limit of the budget (T. 33,634 - 33,635).
8 The War Ministry did not ask for any further funds beyond
9 what they already had in their budget (T. 33,635). Dur-
10 ing the tenure of the Cabinet he was in, it was not
11 necessary to stop the flow of materials to the Kwantung
12 Army. They were able to do whatever they wanted to do
13 with the materials they already had on hand (T. 1,392).
14 The above statement of SHIDEHARA is not quite true to
15 the fact, for request was made of the War Ministry
16 only for a negligible amount outside the Army's normal
17 budget for expenses of troop movements as approved after
18 Imperial Sanction, in conjunction with the dispatch of
19 a mixed brigade from Korea, and drawn from the Second
20 Reserve Fund (see Section 3, Par. 6 below). Original
21 action was carried out within the means on hand already
22 in possession of these armies, and later requests only
23 after Imperial Sanction was given.
24

25 8. It is asked by the prosecution that under
the Hague Convention III in 1907, Relative to the Open-

1 ing of Hostilities, "were the attacks without notice or
2 warning on Mukden, Changchun and Kirin on September 18,
3 1931. . . lawful acts?" (Mr. Keenan, T. 42). We submit
4 the action was as lawful as the Siberian expedition by
5 the Allied Forces in 1918, as the bombardment of
6 Nanking by British and American warships in 1927,
7 and as the raids by Soviet troops across the Manchurian
8 border in 1929.

9 Note: (1) The Allied intervention (1918-1920),
10 "in connection with the chaotic conditions rapidly
11 developing, after the Russian Revolution, in Siberia
12 and North Manchuria, had been proposed by the United
13 States of America for the double purpose of protecting
14 the vast stores of war materials and supplies accumulat-
15 ed at Vladivostok and of assisting the evacuation of
16 some 50,000 Czechoslovak troops . . ." (Ex. 57, T. 34),
17 Ex. 2319-F, T. 17,423).

18 Note: (2) SHIDEHARA testified that on March
19 24, 1927 Japanese residents in Nanking were plundered
20 and injured, that all foreign nationals in that area
21 suffered casualties and damages and that British and
22 American warships off Nanking bombarded the city for
23 one hour while Japanese warships then anchored nearby
24 did not fire a shot (T. 1,349 - 1,350).
25

Note: (3) "Raids by Soviet troops across the

1 Manchurian border began and developed into a military
2 invasion in November 1929" (Ex. 57, T. 36).

3 According to MORISHIMA's testimony, China
4 and Japan never severed diplomatic relations during the
5 period of the Manchurian Incident (T. 3,104 - 3,105).
6 According to SHIDEHARA's testimony, T. V. Soong, Chinese
7 Foreign Minister, and SHIGEMITSU, Japanese Minister to
8 China, conferred together as to how the Incident could
9 be settled. The objective of their talks was to
10 localize the Incident by direct negotiation between
11 China and Japan, but "there was a disagreement within
12 the Chinese Government itself concerning this point,"
13 while "as far as Japan was concerned there was no
14 difficulty" (T. 1,373 - 1,374). According to the Lytton
15 Report, "on September 21, 1931, the representative of
16 the Chinese Government at Geneva wrote to the Secretary-
17 General of the League of Nations asking him to bring to
18 the attention of the Council the dispute between China
19 and Japan which had arisen from the events which took
20 place at Mukden on the night of September 18th-19th . . ."
21 The Council, in its resolution of September 30th, was
22 convinced that both Governments were "anxious to avoid
23 taking any action which might disturb the peace and good
24 understanding between the two nations . . ." . "On
25

1 November 21st, the Japanese representative, after stat-
2 ing that his Government was anxious that the resolution
3 of September 30th should be observed in the spirit and
4 letter, proposed that a Commission of Enquiry should be
5 sent to the spot. This proposal was subsequently
6 welcomed by all the other Members of the Council . . ."
7 (Ex. 57, pp 5-6), T. 1,692 - 1,694).

8 All the above evidence will show that neither
9 China, Japan nor the League of Nations considered the
10 Mukden Incident as a war, whether declared or undeclared,
11 but only a "dispute" which the parties concerned were
12 anxious to settle as soon as possible. Even the United
13 States Government referred to China and Japan only as
14 "disputants" and wanted to "avoid any danger of embarr-
15 assing the League in the course to which it was committ-
16 ed" (Ex. 926, telegram of October 9, 1931, from Stimson
17 to Gilbert, T. 7,357). Needless to say, the Hague
18 Convention III does not apply where no animus belliger-
19 endi can be found either in the parties concerned or in
20 the objective opinions of bystanders. It is obviously
21 impossible to give a notice or warning, unless one has
22 the intention to go to war.

23 Note: (4) MINAMI testified: "The situation
24 was not a peaceful one, while it was not such as would
25 call for an open declaration of war. It was called an

1 Incident, because it was regarded that it would be
2 settled locally" (T. 19,858). However, the Manchurian
3 Incident may be regarded after all "an undeclared war"
4 (T. 19,859). As shown in Part I and Section 1 of
5 Part II above), there are ample evidence that MINAMI
6 did not want to have any incident occur in Manchuria
7 and there is no evidence that he did. After the out-
8 break of the Incident, he tried his best to localize
9 it; as we shall see in the following Sections. How
10 could he be guilty of violation of a treaty or Conven-
11 tion, the compliance with which was physically or
12 humanly impossible? Furthermore, it is the Foreign
13 Minister's responsibility to give proper notice as to
14 declaring war and not that of the War Minister.

15 Section 3. The Crossing of Border
16 by the Korean Army.

17 1. Referring to the question of the Korean
18 Army's dispatch of troops to Manchuria, the evidence
19 shows that its Commander HAYASHI asked the Chief of the
20 General Staff on September 19, 1931 for permission to
21 take such a measure without delay, but a stop order
22 was communicated to him through KANAYA (MINAMI, T.
23 19,782) upon MINAMI's request (KOISO, Ex. 3375,
24 T. 32,217 - 32,218). The telegram of September 19th
25 from HAYASHI TO HONJO (Ex. 3422-A) reads: "As the Chief

1 of General Staff compelled me to suspend dispatch of
2 reinforcements in spite of my repeated statements of
3 opinion, the troops, other than the air force, are
4 temporarily stopped on the south side of Shingishu,
5 awaiting further developments of the situation" (T. 32,833).
6 The expression vividly describes the impatience felt by
7 HAYASHI towards the Chief of General Staff, who firmly
8 held down his demands (KODAMA, Chief of Staff of the
9 Korean Army at that time, Ex. 3431, T. 32,874 - 32,875;
10 KAWABE, T. 19,413). Would KANAYA have been so firm
11 in his denial of HAYASHI's proposal, if MINAMI had
12 not maintained the non-expansion policy? This evidence
13 will definitely establish the fallacy of HARADA's hear-
14 say in his Memoirs of September 19, 1931 (Ex. 3757-B,
15 T. 37,578).

16 Note: (1) The air force mentioned in the
17 telegram withdrew to their base on account of the
18 inclement weather and breakdown and did not start until
19 after the Imperial Sanction was given (KODAMA, T. 32,880).
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1 On September 21, HAYASHI received a tele-
2 gram from the Kwantung Army, whereby he sent a mixed
3 brigade across the border at his own discretion, be-
4 lieving in the desperate situation of the Kwantung
5 Army. For this action, HAYASHI received an Imperial
6 reprimand issued through the Chief of the General
7 Staff, containing the words "warned for future
8 action"(KODAMA, Ex. 3431, pp. 32,877-78; MINAMI,
9 pp. 20,056). Is it not obvious from the above that
10 the whole matter was under the jurisdiction of the
11 Chief of the General Staff and the best MINAMI could
12 do was to exercise whatever influence he had with
13 the Chief of the General Staff?

14 2. On September 22, "the Cabinet
15 saw no alternative but to approve the despatch of
16 the said brigade and the defrayal of expenses accom-
17 panying such action. The Prime Minister immediately
18 reported the affair to the Emperor, the Chief of the
19 General Staff following suit, and the Imperial Order
20 for crossing the border was communicated to the
21 Korean Army by the Chief of the Army General Staff."
22 (MINAMI, Ex. 2435, p. 19,783)

23 Note: (1) Ex. 3423, letter of September
24 22 from KANAYA to MINAMI, notifying the delivery of
25 the Imperial Sanction to the Commanders of the Korean

1 and Kwansung Armies, shows that MINAMI was only a
2 recipient of a notice after the fact was accomplished
3 (pp. 32,833-35).

4 Note: (2) According to MINAMI's testimony,
5 he stated to the Cabinet that they might have to
6 support the application made by HAYASHI and HONJO
7 regarding reinforcements (p. 19,847) and that it
8 could not be helped (p. 19,852); but he never urged
9 in the Cabinet such a measure, to which he was
10 opposed (p. 19,843) and in respect of which he com-
11 municated to KANAYA his disapproval (p. 19,845).
12 After the act was done, MINAMI told KANAYA that it
13 was outrageous for any action to be taken without
14 the permission and approval of the government, and
15 KANAYA transmitted word to HAYASHI of his punishment
16 by the Emperor. The matter was entirely that of the
17 High Command (p. 19,842). Efforts were made to stop
18 HAYASHI from sending reinforcements by way of or
19 through the Chief of the General Staff, but the War
20 Minister had no authority to give punishment upon
21 an official of the Shinin rank (p. 19,848-9, 20,056-7).

22 Note: (3) According to WAKATSUKI's testi-
23 mony, on the night of September 22, HAYASHI moved
24 his troops across the Yalu River, which fact was re-
25 ported to the Cabinet by MINAMI on September 23

1 (Obviously WAKATSUKI is mistaken about the dates
2 which should be one day earlier respectively).

3 MINAMI told the Cabinet that HAYASHI had moved
4 "without the Imperial Sanction or without authority
5 from the Cabinet or the War Minister or the Chief
6 of the General Staff," but HAYASHI had received an
7 urgent request from the Korean Army for aid and had
8 personally deemed the situation of such an urgent
9 nature that it justified peremptory action on his
10 part (Ex. 162, pp. 1,555-1,556). At no other Cabinet
11 meeting, did MINAMI bring the matter up and WAKATSUKI
12 has no recollection that MINAMI might have talked to
13 him of this at sometime or other. (p. 1,563). This
14 testimony also refutes HARADA's memoirs of September
15 19 (Ex. 3757B) and of September 22-23, 1931 (Ex.
16 3758A, pp. 37,579-37,582).

17 Note: (4) According to SHIDEHARA, he does
18 not believe that MINAMI had first proposed that re-
19 inforcements be sent from Korea. The report of such
20 reinforcement came rather as a surprise to all of
21 the Cabinet members (p. 33,635). He does not re-
22 member any occasion at all of MINAMI expressing a
23 desire in the Cabinet that he should have permission
24 to send troops from Korea into Manchuria (p. 33,636).
25

Note: (5) According to MINAMI, "after the

1 outbreak of the Incident in Manchuria, an incident
2 was in existence General HAYASHI dispatched
3 troops during the Incident." (p. 19,857) That is to
4 say, the voice of the Chief of General Staff became
5 stronger and that of the War Minister less because
6 military action was involved.

7 Note: (6) SHIBAYAMA, then military adviser
8 to Chang Hsueh-liang, testified that on the evening
9 of September 19, 1931, when he visited MINAMI at
10 the War Minister's residence, MINAMI requested him
11 to orally communicate to HAYASHI that under no cir-
12 cumstances should the Korean Army be permitted to
13 cross the Yalu River into Manchuria. MINAMI entrusted
14 such a message to SHIBAYAMA, as the latter happened
15 to be leaving Tokyo on that day and the matter re-
16 quired the earliest possible attention (p. 28,634-
17 28,638). This evidence will show that MINAMI was so
18 anxious to stop HAYASHI's proposition that he availed
19 himself of any opportunity for the transmission of
20 his desire.
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3. To the prosecutor's question, why not
1 order the troops to be sent back again or why were they
2 not recalled, MINAMI replied: "Inasmuch as the despatch
3 of troops across the border had been officially recog-
4 nized by the Throne, I had no authority to prevail
5 over that permission and I couldn't do anything about
6 it on my part" (T. 19,851).
7

Note: (1) In this connection, we have to
8 point out some misleading questions by the prosecutor.
9 To quote from the transcript of April 14th, 1947:
10

"Q. But before it was officially recognized
11 by the Throne and instead of advising the Throne
12 officially to recognize it, why not order that they
13 should be sent back?
14

"Mr. Brooks: I want to object to that ques-
15 tion. I don't believe the witness said that he offic-
16 ially advised the Throne.
17

"The President: He seems to know who did and
18 we would like to know who they were and what advice
19 they gave.
20

"A. That I do not know.
21

"Q. As a matter of fact, did not you personally
22 with the Chief of Staff see the Emperor on the even-
23 ing of the 24th of September and advise him to approve
24 of the sending of these troops?
25

1 "A. Absolutely not.

2 "Q. And had you not previously on the same day
3 pressed the same decision upon the Cabinet?

4 "A. No. One word, please. You said the 24th,
5 did you not?

6 "Q. Yes.

7 "A. No, nothing of the kind happened on the 24th.

8 "Q. Did it happen on some other day?

9 "A. Aside from the fact that Premier WAKATSUKI
10 and simultaneously with him the Chief of the Army Gen-
11 eral Staff called on the Throne on the 22nd, I have
12 not made any visit to the Throne." (T. 19,851-19,852)

13 Note: (2) Now, Ex. No. 179, KIDO's Diary,
14 shows the following entries:

15 Sept. 21st: "HARADA transmitted to KIDO,
16 SAIONJI's words to be cautious about KANAYA's answer
17 when KANAYA, Chief of General Staff, would go to see
18 the Emperor to explain why the Korean Army had advanced
19 into Manchuria without the Emperor's sanction" (T.1937).

20 Sept. 22nd: "The Army was so strongly deter-
21 mined in its positive policy toward Manchuria that
22 orders given by the Central Authorities could not be
23 carried out. The Emperor expressed satisfaction and
24 approval to the Prime Minister and the War Minister
25 for the Government policy to strive not to extend further

1 the Manchurian Incident. However, the Army was re-
2 ported to have construed and to be indignant that the
3 Emperor's opinion had been so induced to form by his
4 personal attendants." (T. 1,938)

5 Sept. 29th: "HARADA said that the Chief of
6 the General Staff told the Premier that chances were
7 the Army was compelled to send troops to the Yangtze
8 River area and that if this happened, the Government
9 should not interfere with the prerogative of the Supreme
10 Command of the Army." (T. 1,939-1,940)

11 Note: (3) It is quite plain, therefore,
12 that it was KANAYA who went to the Emperor to explain
13 the Korean Army's advance to Manchuria and who later
14 told WAKATSUKI not to interfere with the prerogative
15 of the Supreme Command. On the other hand, MINAMI
16 received the Emperor's approval for striving not to
17 extend further the Manchurian Incident. There is no
18 doubt also about whom KIDO meant by the words "the
19 Army" in his entries.

20 Note: (4) Ex. No. 3423, KANAYA's letter
21 of September 22d, encloses the Imperial Sanction of
22 the same date, which was subscribed as "By Imperial
23 Command, Chief of General Staff, KANAYA, Henzo."
24 (T. 32,835) Thus, the prosecutor's questions based
25 upon HARADA's Memoirs of September 22d-23d, 1931,

(Ex. No. 3758-A) are apparently contradicted by facts.

4. According to MINAMI's testimony, since there was no means of conveying the policy of the Government to the Chief of the General Staff except through the War Minister, a very intimate relationship existed between the two. There was, however, a clear distinction between such a relationship and the deployment of forces for operational purposes overseas, and in so far as it was not inconsistent with the Government policy, no interference was exercised with the said Chief's actions. (T. 19,853) Then, to the President's question whether it was consistent with the Government policy not to recall the troops, MINAMI answered "Yes." (T. 19,853) This fact is endorsed by exhibit No. 189, Government proclamation of September 24th, 1931, which reads as follows:

"It may be added that while a mixed brigade of 4,000 men was sent from Korea to join the Manchurian garrison the total number of men in the garrison at the present still remains within the limit set by the treaty and that fact cannot therefore be regarded as having in any way added to the seriousness of the international situation. It may be superfluous to repeat that the Japanese Government harbors no territorial designs in Manchuria. What we desire is that

1 Japanese subjects shall be enabled to safely engage
2 in various peaceful pursuits and be given an opportu-
3 nity for participating in the development of their land
4 by means of capital and labor. It is the proper duty
5 of a government to protect the rights and interests
6 legitimately enjoyed by the nation or individuals. The
7 endeavors of the Japanese Government to guard the South
8 Manchurian Railway against wanton attacks would be
9 viewed in no other light." (T. 2,244)

10 5. At this juncture, we wish to call the
11 attention of the Tribunal to an obvious but seemingly
12 ignored fact that, although HAYASHI infringed the rule
13 to obtain the Imperial Sanction before the crossing
14 of the Manchu-Korean border, he, himself, had a good
15 cause to do so. According to KAWABE, then a staff
16 officer of the General Staff, "the Central Command
17 set a basic plan to the Kwantung and Korean armies,
18 and ordered the two armies to make detailed plans ac-
19 cording to it. There was included the consideration
20 of reinforcing the former army by the latter." "Ex.
21 2408, T. 19,408) ISHIHARA, then a staff officer of
22 the Kwantung Army, testified that the operational plans
23 drawn up by the central military authorities were
24 given separately to the Commander of the Kwantung Army
25 and to the Commander of the Korean Army. In these

1 plans, it was arranged that in case fighting broke out
2 in Manchuria, the Commander of Kwantung Army was to
3 ask for one mixed brigade from Korean Army to be sent
4 as speedily as possible; "and every year detailed agree-
5 ments between the two armies were drawn up in connec-
6 tion with the transportation of this mixed brigade."

7 (T. 22,237) Hence, it was natural for HONJO to cable
8 for a reinforcement from Korea and for HAYASHI to com-
9 ply with the request. The concentration of a mixed
10 brigade at the border in the morning of September 19th
11 was a mere routine work of this "prearranged plan,"
12 not many weeks or months old, but dating from the time
13 of the Russo-Japanese War. This can neither be called
14 a plot or conspiracy, nor be a preparation for waging
15 an illegal war, inasmuch as it was an axiomatic exer-
16 cise of the right of national defense inherent in any
17 sovereign state.

18
19 The fact that some members of the General
20 Staff wished to put this traditional plan into execu-
21 tion is apparent in the testimonies of MINAMI (Ex. 2435,
22 T. 19,781; see Section 2, Para. 1 above) and KAWABE,
23 (Ex. 2408, T. 19,412-13) and endorsed by the KIDO
24 Diary (Ex. 179, T. 1,937-40; see Section 3, Para. 3,
25 Note (2) above)

Note: KAWABE testified: "At the time Section

1 Chief IMAHURA came out of the conference room, I think
2 about 9 o'clock, I read the telegraphic report ad-
3 dressed to the Chief of the General Staff from General
4 HAYASHI, Senjiro, Commander of the Korean Army, and
5 learned that a step had been taken to dispatch to
6 Manchuria a unit led by a brigade commander chiefly
7 consisting of five infantry battalions in order to
8 relieve the Kwantung Army near Mukden. I personally
9 knew that the Kwantung unit near Mukden was a small
10 force and felt that the step taken by the Commander of
11 the Korean Army should be approved, and expressed my
12 opinion regarding this to my senior officer, but by
13 the leaders of the General Staff, reinforcement of
14 troops in Manchuria was looked upon as a measure that
15 might widen the incident and it was decided to order the
16 commander of the Korean Army to stop such action. They
17 immediately took measures to send a telegram to that
18 effect. Moreover, taking into account the time that
19 would be required for the commander's new order to be
20 transmitted to the troops under his command, acting
21 on the intention of the Central Command, the Vice Chief
22 of the General Staff issued the following order by
23 telegram to the Commander of the Military Police Unit
24 at Hsinichow on the south bank of the Yalu River:
25 "If any Korean Army Units should attempt to cross the

Yalu River, not knowing the orders prohibiting the expedition, the intention of the Central Command shall be conveyed in order to prevent any advance to the north of Hsinichow." (Ex. 2408, T. 19,412-13) If the Vice Chief had not taken this precautionary measure, the crossing of the border might have been carried out on the 19th, instead of the 21st.

From the above it may be inferred that HAYASHI must have thought that he was doing his duty in sending a reinforcement to Manchuria and that the stop order of the Chief of General Staff was a thing extraordinary. (Ex. 3422-A, see Section 3, Para. 1 above) As the wireless service of the Korean Army was out of order and the State Cable Service conveyed nothing but the said interdict, he felt himself "altogether isolated from the central authorities." (KODAMA, Ex. 3431, T. 32,875) During the days of waiting at the border, he must have received all sorts of rumors and reports coming across the Yalu River and finally, on September 21st, the second appeal for aid from the Kwantung Army, telling him that not a single soldier remained in Mukden to guard the city. (KODAMA, T. 32876) He could not understand why the central authorities were neglecting the protection of compatriots in spite of virulent disturbances of law and order in Manchuria.

In the final analysis, he must have concluded that
1 the Imperial Sanction was a matter of formality while
2 the need on the spot was a matter of life and death.
3 He resolved upon himself meeting any punishment by
4 the Emperor rather than remaining indifferent at the
5 crisis of one million Japanese and Koreans. Thus,
6 he let his troops go into Manchuria, and expressing
7 his penance, sent in a formal enquiry to Tokyo whether
8 or not he should resign. (KODAMA, T. 32,877)
9

10 6. On the other hand, the fact that in
11 spite of the existence of the aforesaid traditional
12 plan of reinforcement, MINAMI requested KANAYA to send
13 a stop order to HAYASHI and KANAYA did as he was re-
14 quested (KOISO, Ex. 3375, T. 32,217-18; see Section 3,
15 Para. 1 above) is a significant proof that the central
16 army authorities never dreamt of such a thing as creat-
17 ing an incident in Manchuria or using it as "a pretext
18 for Japan to conquer, occupy and exploit that country."
19 (see Part I, Para. 4, above) They looked upon the
20 reinforcement of troops "as a measure that might widen
21 the incident." (KAWABE, Ex. 2408, T. 19,413, see
22 Note in the preceding para.) Naturally, they could
23 not feel the tense atmosphere prevailing at the front-
24 ier. However, when the troops had actually gone across
25 it, they were prevented from recalling them until a

1 fair prospect could be established for the maintenance
2 of law and order, for the simple reason that their
3 withdrawal would be advertised by the Chinese as a
4 Japanese defeat and bring about further disturbances
5 by bandits and fugitive soldiers.

6 Note: "The districts evacuated by the Japan-
7 ese were re-occupied by the Chinese troops and this
8 fact was widely advertised. Chinese morale was slightly
9 raised; and the activities of irregular forces and ban-
10 dits increased." (Ex. 57, T. 77)

11 Furthermore, the central army authorities
12 never intended to station the expeditionary force per-
13 manently in Manchuria. The Governmental proclamation
14 of September 24th, 1931, (Ex. 189) which was based on
15 the report submitted by MINAMI, (SHIDEHARA, Ex. 3479-A,
16 T. 33,551) announced to the world: "In order to fore-
17 stall imminent disaster the Japanese army had to act
18 swiftly. The Chinese soldiers, garrisoned in neighbor-
19 ing localities, were disarmed and the duty of main-
20 taining peace and order was left in the hands of the
21 local Chinese organization under the supervision of
22 the Japanese troops. These measures having been taken,
23 our soldiers were mostly withdrawn within the railway
24 zone. There still remain some detachments in Mukden
25 and Kirin and small number of men in a few other places.

1 But nowhere does a state of military occupation as
2 such exist. - - It is true that a detachment was
3 despatched to Kirin September 21st, but it was not
4 with a view to military occupation but only for the
5 purpose of removing the menace to the South Manchurian
6 Railway flank. As soon as that object has been attained
7 the bulk of our detachment will be withdrawn." (T.2243-4)

8 It is our submission that a public statement
9 of this magnitude in scope and minuteness in detail
10 could not have been made by a man who was not sin-
11 cere. We shall see in the following section how
12 MINAMI exerted himself in carrying out this assurance.
13 (In particular, see Section 4, Para. 4, below)

14 7. In reply to the prosecutor's question,
15 whether or not it was always possible for him to control
16 the operations of the General Staff by refusing to pay
17 the expenses, MINAMI testified that it could be done,
18 but that it had never been in his mind about reject-
19 ing expenditures and that nobody made any suggestion
20 in the cabinet such as he should deal with the matter
21 by refusing the payment of expenses. (T. 19,855-6)
22 He did not persuade the cabinet to authorize the
23 expense for the dispatch of troops. (T. 19,856) As
24 the Emperor approved the sending of troops from Korea
25 to Manchuria, the Government could not but approve the

defraying of expenditures (T. 20,057). The request
1 for such expenditures was made by the Chief of the
2 General Staff. The War Minister ascertained the
3 amount required for any particular purpose and then
4 brought the matter up to the cabinet, asking for the
5 approval of the Prime Minister. The amount thus ap-
6 proved was 9,600,000 Yen and drawn from the Second
7 Reserve Fund. (T. 20,057-20,578)

8
9 According to WAKATSUKI's testimony, he denies
10 that on September 22d the cabinet unanimously decided
11 the Korean Army's despatch to Manchuria and the de-
12 frayal of expenditures necessary there to. (T. 1,563-4)
13 He remembers, however, that he "did inform the Emperor
14 that the Cabinet had decided to pay the expenses of
15 the Japanese Army in Manchuria, but that was much
16 later." (T. 1,564-5) The Army was already in Manchuria,
17 and unless the expenses for the Army were disbursed
18 that Army would be endangered.

19 Note: In view of this fact, WAKATSUKI "as the
20 Prime Minister" decided to make such disbursements.

21 The War Minister might have said that to him,
22 but he does not remember at all. (T. 1,592) The fig-
23 ures on the amount of money necessary for those ex-
24 penses were compiled into the budget which was proposed
25 to the next session of the Diet and there approved.

1 WAKATSUKI thinks that such figures were furnished
2 by the Ministry of War, "since that would be the
3 proper procedure." (T. 1,593) In any case, this tes-
4 timony will refute HARADA's Memoirs of September 22d-
5 23d, 1931. (Ex. 3758-A)

6 According to SHIDEHARA, he does not believe
7 that the question of providing the funds was taken up
8 at the Cabinet Council. (T. 33,636) "After the rein-
9 forcements had been sent from Korea, the War Ministry
10 thought that the expenditures would be defrayed within
11 the limits of the budget, and they . . . didn't apply
12 for any additional expenditure." There was no need
13 for MINAMI "to go to the Cabinet to ask for additional
14 expenditures so far as these expenditures could be
15 covered within the limits of the budget." (T. 33,638)

16 Whichever may be the case, whether or not
17 MINAMI had power to stop the supply of money and mater-
18 ial, whether or not he proposed the payment of ex-
19 penses to the Cabinet, or whether it was the Cabinet
20 or the Prime Minister who decided the matter, the most
21 important fact of the case is that neither MINAMI nor
22 WAKATSUKI nor SHIDEHARA ever thought of refusing the
23 defrayal of expenditures. Why? Because the troops were
24 already in Manchuria (WAKATSUKI, T. 1,564, 1,592;
25 SHIDEHARA, T. 33,640) and the Imperial Sanction was

1 given (MINAMI, T. 20,057), and they had to be sus-
2 tained until withdrawn. There was not the slightest
3 consciousness in MINAMI or anybody else concerned that
4 they were doing anything wrong by meeting the expenses
5 for supplying of such troops.

6 Section 4. Consular Reports and Government
7 Measures.

8 1. SHIDEHARA testified that after the incident
9 broke out, he received a number of reports from dip-
10 lomatic and consular officers in China and Manchuria
11 and used to send copies thereof to the Prime Minister,
12 the War Minister, the Navy Minister and the Chief of
13 General Staff, (T. 33,592-7) and that in the case of
14 the more important ones, he brought them up and dis-
15 cussed them in the cabinet. (T. 33,595) MINAMI does
16 not deny that he was kept informed of these consular
17 reports. It is obvious, however, that the War Minister,
18 who must have been very busy in these days, would not
19 himself look over the telegrams one by one. (T. 19,821,
20 19,827, 19,828; see Section 1, Para. 5, Note (3))

21 Note: (1) According to his testimony, he
22 never saw anything concrete, that is, the telegram
23 itself or the contents thereof. He trusted SHIDEHARA
24 implicitly and never asked him about telegrams each
25 time they arrived. (T. 19,879-80)

Note: (2) According to SHIHATORI's testimony, although reports from consuls in Manchuria and China were as a custom sent to the War Ministry, addressed to the Vice Minister of War, by the Telegraphic Section of the Foreign Office on orders of the Vice Minister of Foreign Affairs, the number of such reports sent out was about a half of the total number received. The Vice Minister of Foreign Affairs had the authority to select reports which would be transmitted to other ministries. Although it was possible for the Foreign Minister to give information to another minister at cabinet meetings, he did not directly concern himself with the transmission of such reports.
(T. 35,062-4)

From the above testimonies it may be inferred that any information true or false, thus supplied by the consular service and brought, if ever, to the notice of MINAMI, must have been the common property of the government as well as the Supreme Command. It follows, therefore, that whatever measures, taken or not taken by MINAMI in reference to such information, were based on the wish and policy of the government as a whole. WAKATSUKI testified: "As War Minister MINAMI always came to cabinet meetings and never raised any objection to policies decided by the cabinet, I do

1 not believe that War Minister MINAMI did anything in
2 opposition to the policy of the cabinet." (T. 1,583,
3 1,571; See PART I, Para. 10 above.)

4 SHIDEHARA testified also that he was sure
5 MINAMI had every desire to put into practice what
6 was discussed and determined at the cabinet. (T. 33,631-
7 33,632) Hence, MINAMI's action or inaction vis-a-vis
8 the said consular reports was no different than that
9 of the government. Bearing this premise in mind, we
10 shall in the following examine these consular reports
11 in chronological order in conjunction with the govern-
12 mental measures taken contemporaneously.

13 2. As to three telegrams of Consul-General
14 HAYASHI under date of September 19th, 1931, we have
15 already discussed them in detail. (See Section 2,
16 Paragraphs 4 and 5, above.)

17 On September 21st there were two telegrams
18 from HAYASHI to SHIDEHARA referring to the "temporary
19 city administration" of the Japanese and Chinese joint-
20 ly under Colonel DOHIHARA as Mayor and six Japanese as
21 section chiefs. (Ex. 3479-B, T. 33,602-3) However,
22 when HAYASHI met HONJO and pointed out to him the mis-
23 take, HONJO endorsed HAYASHI's opinion, but remarked
24 that it would be a matter of a few days, as it was
25 only a temporary measure until they could turn the

administration over to the Chinese. (Ex. 2194,
1 T. 15,736-8)

2 Immediately on the next day, the 22d, MINAMI
3 wired to HONJO that it was not proper to carry out
4 direct "military administration", that no time should
5 be lost in letting Chinese autonomous agencies, such
6 as the General Chamber of Commerce, take charge there-
7 of, and that the task of the army should be confined
8 only to negotiation and liaison with such agencies.
9 (Ex. 3422-C, T. 32,837) MINAMI testified that such
10 was the decision of the cabinet, (T. 19,878) but that
11 DOHIHARA's prior appointment as Mayor was considered
12 unavoidable in order to restore and maintain law and
13 order in Mukden (T. 19,879) and that the Kwantung
14 Army did not violate the policy prohibiting military
15 administration. (T. 20,067)

17 Note: Refer to the testimonies of KATAKURA
18 (T. 18,924-7) and ITAGAKI (Ex. 3316, T. 30,267). The
19 Kwantung Army had no intention of instituting a mili-
20 tary administration.

21
22 3. On September 22d, KANAYA wired to HONJO
23 that the Kwantung Army must maintain the present forma-
24 tion in line with its original duties. (Ex. 3422-D,
25 T. 32,839)

Note: (1) According to KAWABE's testimony

1 the Central Command ordered that the force dispatched
2 to Kirin should be evacuated to the South Manchurian
3 Railway zone as soon as the situation subsided, and
4 sent on the 22d the following telegram to HONJO: "We
5 now deem military action in Manchuria to have for the
6 most part fulfilled its purpose and to have now reached
7 a conclusion. Any further action will have a close
8 relationship with our domestic and foreign policies,
9 so be careful in considering matters and do not start
10 new actions until instructions from the Central Command
11 are received and then execute them." (Ex. 2408,
12 T. 19,415-6; See KATAKURA, T. 18,910)

13 Note: (2) According to KOISO's testimony,
14 towards the end of September MINAMI, after consultation
15 with KANAYA, indicated to HONJO that Japanese troops
16 should not advance either to the north or to the west
17 of the Taliaho (Liao River) line, and that units close
18 to Chinchow should be withdrawn. (T. 32,218)

19 On September 23d KANAYA wired to HONJO pro-
20 hibiting the despatch of troops to Harbin even in the
21 event of a sudden change in the situation. (Ex. 3422-F,
22 T. 32,840) On the same day, SUGIYAMA (Vice Minister
23 of War) wired to MIYAKE (Chief of Staff, Kwantung Army)
24 that the cabinet meeting decided to give no pro-
25 tection on the spot to Japanese residents in Harbin

and that they should be evacuated therefrom in case
1 the situation made it inevitable. (Ex. 3422-G, T.32,840)

2 Note: (3) According to KATAKURA's testimony,
3 retreating Chinese armies had engaged in riotous ac-
4 tivities in Harbin and thrown hand grenades at Japan-
5 ese establishments, whereby the Consulate General re-
6 quested three times for the despatch of troops. But
7 in accordance with the instructions from the central
8 authorities, HONJO abandoned the idea of defending the
9 residents in that area. (T. 18,912-14)

10 On the next day, the 24th, MINAMI wired to
11 HONJO instructing him not to use military force in
12 Chientao, even if the condition became serious, but to
13 rely on the police power. (Ex. 3422-H, T. 32,841)

14 Note: (4) According to MINAMI's testimony,
15 at page 16,860 of the record, he says that he did not,
16 on or about September 30th, propose in the cabinet
17 that troops should be sent to Chientao, and then at
18 page 19,865 he says "yes" and that it was a separate
19 and additional one besides the expedition of the Korean
20 Army on September 21st. (T. 19,868) He did not issue
21 the order but approved it, (T. 19,869) and the number
22 of troops dispatched was about 120 to 130 men.

23 T. 20,060) According to KODAMA's testimony, (Ex. 3431)
24 apart from the said telegraphic instruction of MINAMI
25

1 (Ex. 3422H), the Chief of the General Staff ordered
2 under Imperial Sanction the dispatch of the unit to
3 Chientsao, as towards the end of October the situation
4 became too difficult for the police alone to deal
5 with it (T. 32,878). As exhibit 3422H shows MINAMI's
6 resolution on September 24th not to use military force
7 in Chientsao even in the case of extremity, it is
8 improbable that he stressed the despatch of troops
9 there at a Cabinet meeting on or about September 30th
10 as alleged by HARADA's Memoirs of that date (Ex. 3759A,
11 T. 37,589). It was obviously towards the end of
12 October when such a measure was taken by the Chief
13 of the General Staff after approval of the Cabinet.
14 There is a confusion in MINAMI's testimony, but age
15 may account for it.
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4. On the same day, the 24th, MINAMI and
1 SUGIYAMA instructed Major General HASHIMOTO to go to
2 Manchuria and endeavor to make the Kwantung Army apply
3 for instruction of the central authorities in matters
4 seriously affecting the Government policy, without
5 letting the Army act on its own discretion (Ex. 3425,
6 T. 32,842-32843).

Note: According to MORISHIMA's testimony,
8 shortly after the Incident, three officers, namely
9 Major-General HASHIMOTO, Major ENDO and Captain IMAI
10 were sent by the central army authorities to Mukden
11 and their purpose was to communicate to the Kwantung
12 Army the intentions of the authorities, i.e., non-
13 expansion and settlement on the spot (T. 3,091).

On the next day, the 25th MINAMI wired to
16 HONJO as follows: "By virtue of the Governmental
17 declaration recently proclaimed, the course of the
18 Empire's policy has become clear of itself. At the
19 Cabinet meeting on this 25th, all the members agreed
20 to make every possible effort, with unity and cooper-
21 ation, for the execution of the purport of the said
22 declaration. Now that the country is facing an
23 emergency, it is absolutely necessary that both the
24 diplomatic and military authorities on the spot should
25 renounce minor differences for the greater common aim

1 and do their duty by mutual cooperation for the inter-
2 est of the country. The Foreign Minister has instructed
3 the diplomatic organs on the spot to the same effect
4 as above. Such a necessity is felt even more at this
5 time when an end shall be put to military actions
6 and a turn for diplomatic negotiations be commenced"
7 (ex. 3422I, T. 32,844).

8 The Governmental Proclamation above referred
9 to can be nothing but that of September 24th, 1931
10 (Ex. 189; see Section 3, Paras. 4 and 6, above),
11 which is a public manifestation of MINAMI's attitude
12 towards the Incident, while this telegram (Ex. 3422 I)
13 is a confidential expression of MINAMI's thought to
14 HONJO. In our submission not only there is no dis-
15 crepancy between the two, but the latter reflects
16 vividly his sincerity and earnestness in his effort
17 for peace. If his desire to substitute diplomatic
18 negotiations for military operations were fulfilled,
19 Japan would never have been ostracized by the world.
20 This evidence will refute HARADA's hearsay that MINAMI
21 proposed at a cabinet meeting to withdraw from the
22 League of Nations (Ex. 3760-A, T. 37,589-37,590).

23 5. On September 25th, the same day on which
24 the above telegram was despatched, MINAMI wired to
25 HONJO, strictly prohibiting Japanese from having

1 connection with any movement for promoting a new
2 regime in Manchuria (Ex. 3422J, T. 32,850-32851).

3 Note: (1) According to MINAMI's testimony,
4 he and SHIDEHARA sent instructions to Manchuria, the
5 former to the military and the latter to the diplomatic
6 organs to the effect that all Japanese should not
7 interfere or participate in such internal affairs or
8 movements in Manchuria (T. 20,063).

9 Note: (2) According to YAMAGUCHI's testi-
10 mony, at the time when he was a member of the South
11 Manchuria Railway, the company had strict regulations
12 prohibiting its employees from participation in any
13 such activities, and they were to be severely punished
14 if they violated the rule. And the Kwantung Army had
15 issued a proclamation under a military order, pro-
16 hibiting strictly any political activities by the
17 Japanese (T. 18,838-18,839).

18 On September 28th, HAYASHI reported to
19 S IDEHARA that according to the talk of DOHIHARA
20 to MORISHIMA, the Local Preservation Committee should
21 be gradually made into the central organ of admin-
22 istration and the self-defense corps should be trans-
23 ferred to the said Committee and 1000 rifles were
24 delivered for the purpose of organizing a police
25 force (Ex. 3479C, T. 33,605-33,606). We cannot however

see anything wrong in this report (See Para 10 below.
1 Ex. 286).

2 On September 29th, the next day, SUGIYAMA
3 (Vice-Minister of War) wired to MIYAKE (Chief of Staff,
4 Kwantung Army), warning the Kwantung Army to have
5 nothing to do with the movement for restoration of
6 Emperor Hsuan Tung, as rumor circulated among Cabinet
7 members that HONJO was connected therewith (Ex. 3422K,
8 T. 32,859; see KATAKURA, p. 18,974).

9 Note: (3) According to KATAKURA's testi-
10 mony, around September 22nd or 23rd, and also on the
11 26th, Lo Chin-Yu (Adviser to Emperor Hsuan Tung)
12 visited ITAGAKI and said that as Hsi Hsia (Governor
13 of Kirin) was desirous of inviting the Emperor to
14 Kirin, Lo would go to Tsientsin to call him in person.
15 KATAKURA drafted a telegram to Tokyo incorporating
16 the gist of the above conversation. In reply, the
17 Vice-Minister of War sent telegraphic instruction that
18 the Kwantung Army should not take part in any way with
19 such movements as the monarchical restoration. That
20 was towards the end of September (T. 18,942-18,943,
21 T. 18,968; ITAGAKI, Ex. 3316, T. 30,274).

22 Note: (4) According to MINAMI's testimony
23 he did not, about September 26th, hear a report from
24 the Ministry of Overseas Affairs that DOHIHARA and
25

1 others were planning to reinstall Pu-Yi as Emperor of
2 Manchuria. As he never received such reports, there
3 was nothing to take measures against (T. 19,877-
4 19,878). This is contradicted by the above-mentioned
5 telegram of SUGIYAMA, but it is obviously natural for
6 MINAMI not to be able to remember all these details
7 which took place 16 years ago.

8 Note: (5) On October 1st, SUGIYAMA wired
9 to MIYAKE, prohibiting the rumored intention of the
10 Kwantung Army to enforce municipal administration
11 in Changchung (Ex. 3428, T. 32,860).

12 6. On October 3rd, HAYASHI reported to
13 SMIDENARA a rumor that Yen Chin-Kai would be the
14 leader of the Liaoning Autonomous Government and that
15 Yuan denied the rumor which was seemingly originated
16 from a request of DOHIHARA to Ting Chien-Hsiu to open
17 financial and business offices (Ex. 3479D, T. 33,607-
18 33,609). On October 6th, HAYASHI reported that YOSHII,
19 Kan Chao-Hsi and others were planning the establish-
20 ment of a new political regime with the Four Peoples
21 Preservation Committee as its basis, and that the
22 military authorities, recognizing this maneuver would
23 be contrary to their fundamental policies, advised
24 YOSHII to resign (Ex. 3479F, T. 33,610-33,612).
25

How could MINAMI have inferred from the above

1 reports any sinister meaning, such as that DOHIHARA
2 was guiding the local Chinese Committee, or that he
3 had ordered the Committee against its wish to set up
4 a Board of Finance and a Board of Industry, or that
5 he had prohibited the setting up of another Chinese
6 Committee because the only one must be the one which
7 he controlled and the army supported? (MINAMI
8 T. 19,881-19,882).

9 MINAMI's thought at that time was no different
10 from that of Yuen Chin-Kai, who, according to the
11 Lytton Report (p.89), declared publicly on October
12 5th, 1931, as follows: "The Committee (for the
13 Maintenance of Peace and Order) had been brought into
14 being to preserve peace and order after the breakdown
15 of the former administration. It assisted, moreover,
16 in relieving refugees, in restoring the money market,
17 and it attended to some other matters, solely for the
18 sake of preventing unnecessary hardship. It had,
19 however, no intention of organizing a Provincial
20 Government or declaring independence." If HONJO
21 was forcing independence upon an unwilling populace,
22 how could Yuen make such a public statement? What
23 MINAMI and SHIDEHARA as well as the whole Japanese
24 Government wanted was the repletion of these organs
25 for the maintenance of public order in various parts of

1 Manchuria and that gradual settling-down of the inner
2 regions by means of such organs (Ex. 286, T. 4,355-
3 4,359, see Para. 17, below). It must be admitted
4 that there was and is no other way of stabilizing the
5 people's life in a disorganized country following
6 conflict therein.

7 7. On October 13th, HAYASHI reported that
8 the Mukden Municipal Office was planning the monopoliz-
9 ation of opium and the issue of lottery tickets for
10 the purpose of raising their funds and that the
11 Kwantung Army had no objection to the scheme which,
12 HAYASHI thought, would be "unfavorable from the view-
13 point of international relations and so forth."
14 HAYASHI, therefore, requested SHIDEHARA "to call upon
15 the top army to immediately check this movement"
16 (Ex. 3740, T. 37,340-37,341). The request of HAYASHI
17 must have been carried out, for there is no evidence
18 that the Municipal Office monopolized the sale of
19 opium or issued lottery tickets.

20 On the same day, HAYASHI reported a story
21 of KIKUTAKE (Chief of the South Manchurian Railway
22 local office) that Chang Hai-Peng of Tsonan was
23 supplied with 5,000 rifles by the Kwantung Army, but
24 asked for further assistance of 200,000 Yen as war
25 fund, and also a rumor that the South Manchurian

1 Railway would advance 3,000,000 Yen to the Kwantung
2 army (Ex. 2406, T. 37,323). On October 17th, HAYASHI
3 reported a story of Hsiih Chieh-Shik that Chan Hai-Peng
4 would have been supplied with 10,000 rifles, 200,000
5 Yuan in silver, field guns and planes by "a certain
6 quarter" as a condition for entering Heilungkiang
7 Province, declared the independence, and then proceed
8 with the Restoration of the Monarchy, but in reality
9 received only 3,000 rifles and 200,000 Yuan in silver
10 (Ex. 2407, T. 37,324-37,325). It is obvious that such
11 rumors were current at that time, but that none of
12 them had even a logical foundation. MINAMI knew the
13 financial status of the Kwantung Army, which would
14 have barely sufficed to maintain its own troops
15 (see Section 3, Para. 7, above). Count. UCHIDA,
16 president of the South Manchurian Railway, was a
17 famous diplomat, having occupied the post of the
18 Foreign Minister at the time of the Washington Confer-
19 ence, and would have never consented to advance a cent
20 to the Kwantung Army for any purpose such as a
21 "secret military fund" (Ex. 2406). He was the one by
22 whose help HAYASHI tried to call the attention of
23 HONJO and to stop the Army's operation along the
24 South Manchurian Railway zone on the night of September
25 18th (Ex. 181, part 2, T. 2,183; see Section 2,

1 Para. 5, above). At any rate, MINAMI could not
2 believe these rumors without making a proper investi-
3 gation.

4 Note: (1) TAKEDA testified: "As far as
5 I know I believe that no such thing occurred. I
6 assume that Consul General HAYASHI's telegram is
7 very emotional and had a tendency to make exagger-
8 ations." (T. 19,363).

9 Note: (2) According to KATAKURA's testi-
10 mony, Chang Hai-peng donated 200,000 Yuan to Pu-Yi.
11 This will show that Chang was not in need of money
12 at all (see Para. 13, Note (3), below).

13 Note: (3) Chang Hai-Peng was one of the
14 Leaders of "the Three Eastern Provinces Independence
15 Army" in 1929, who planned to raise the Yellow Dragon
16 flag of the Ching Dynasty and set up Prince Kung as
17 the head of an independent Manchuria (Ex. 2385, report
18 of January 11th, 1929, from the Chief of Public
19 Safety Bureau of the Kwantung Government to the
20 authorities in Tokyo, T. 19,152).

21 On October 16th, HAYASHI reported that
22 preparations were being made to have the Local Preser-
23 vation Committee appoint a Chinese Mayor and Chinese
24 section chiefs, and that the Japanese occupying such
25 posts would resign according to the plan of the Army

1 (Ex. 3479 F, T. 33,613-33,614). On October 19th,
2 HAYASHI further reported that Chao Hsin-Po accepted
3 the mayorship of Mukden upon the earnest advice of
4 DOHIHARA, and that all the Japanese would resign
5 from their posts (Ex. 3479 G, T. 33,616). Such whole-
6 sale resignation of the Japanese officials is the
7 evidence that MINAMI's instruction not to meddle with
8 administrative affairs was complied with by the Kwan-
9 tung Army. According to MINAMI's testimony, it was
10 impossible for him to be informed of details, such
11 as that the Japanese who assisted DOHIHARA as mayor
12 were in future to act as advisers to his Chinese
13 successor or why DOHIHARA remained mayor for a month
14 or how his successor became appointed. MINAMI
15 believed that HONJO loyally abided by MINAMI's in-
16 structions as to Government policy and that DOHIHARA
17 was not interfering with the internal political
18 affairs of Manchuria (T. 19,893-19,894).

19 Note: (4) According to KATAKURA's testi-
20 mony, the Kwantung Army had never at any time on its
21 own taken any part in the foundation or organization
22 of a Committee for the maintenance of peace and order.
23 The Liaoning Committee was formed by Yuan Chin-Kai and
24 other Chinese and they later came to the Kwantung
25 Army headquarters in connection with the appointment

1 of a Japanese adviser. However, the Kwantung Army
2 maintained contact and liaison with committees after
3 they were established in order to seek their cooper-
4 ation, because the Kwantung Army did not establish
5 military administration. The Kwantung Army was not
6 at all a nursemaid of these committees, for according
7 to the old Chinese custom and practice such a committee
8 after it was formed was a full-fledged adult (T. 19,072-
9 19,074).

10 8. However, according to SHIDEHARA's testi-
11 mony, the Kwantung Army was not observing the decisions
12 of the Cabinet and SHIDEHARA often told MINAMI of what
13 was then happening in Manchuria, but his impression
14 was that MINAMI had no power to control these men.
15 SHIDEHARA is sure that MINAMI had every desire to put
16 into practice what was discussed and determined at the
17 Cabinet Council, but that his advice or instructions
18 were not, in fact, obeyed in various parts of Manchuria
19 (T. 33,631-33,632).

20 Note: (1) According to SHIDEHARA, MINAMI
21 had a "legal power" to have prevented the further
22 expansion of the Incident. "Under the existing law,
23 he could send any order to his subordinates, but he
24 probably looked at the question from a broader point
25 of view: whether that would bring any deterioration

1 of the whole situation in Manchuria" (T. 33,662).

2 Note: (2) According to SHIDEHARA, it was his
3 understanding that the Cabinet had no direct voice in
4 Army affairs (T. 1,335). The Government could not
5 interfere directly with the Army, but it could convey
6 to the Army through the War Minister what the Govern-
7 ment thought of any action of the army and so to a
8 certain extent the Government was able to have a say
9 in controlling the army policy (T. 1,336-1,337).

10 Legally, there was no rule definitely stating who was
11 responsible for the actions of the army, but his
12 opinion was that the War Minister was responsible,
13 because he was "the only one that could be responsible"
14 (T. 1,388). Concerning who was the Commander of the
15 Kwantung Army, the Cabinet had no connection with such
16 matters, which belonged to the Imperial prerogative of
17 the Supreme Command, and it was not within SHIDEHARA's
18 sphere to know of such matters. (T. 1,390)

19
20 From the above, it may be seen that SHIDEHARA
21 has no clear idea as to the legal power of the War
22 Minister (see Section 2, Para. 2, Notes (1), (2),
23 (3), (4) and (5) above).

24 Note: (3) Concerning the authority to
25 command HONJO, WAKATSUNI testified that the War
Minister was in charge of the administration of the

1 army and the Chief of General Staff was in charge of
2 strategic and operational matters and that the War
3 Minister had no authority to command the Chief of
4 General Staff (T. 1,585-1,586).

5 In reply to the prosecutor's question that
6 if MINAMI was really sincere in wanting to stop the
7 Incident, he had complete power to do it in one of
8 two ways, either by refusing to find the money out of
9 his budget or by recalling those officers who were not
10 carrying out his instructions, and that he did neither,
11 SHIDEHARA testified that that was legally right, but
12 then there might be a "revolution" or "wholesale
13 indiscipline" and MINAMI "would be placed in a very
14 impossible position" and that "perhaps he thought
15 about it and did not press the question at the Cabinet
16 Council," looking at the question from the "practical
17 side" (T. 33,639-33,640). The Kwantung Army "had
18 already given assurance that there would be no ag-
19 gravation of war," and all that SHIDEHARA and MINAMI
20 did was to put the Governmental declaration of non-
21 expansion into effect "with less possible friction"
22 (T. 33,640).

24 Note: (4) In reply to the prosecutor's
25 question whether SHIDEHARA asked MINAMI why MINAMI
did not recall those subordinates who would not obey

1 army and the Chief of General Staff was in charge of
2 strategic and operational matters and that the War
3 Minister had no authority to command the Chief of
4 General Staff (T. 1,585-1,586).

5 In reply to the prosecutor's question that
6 if MINAMI was really sincere in wanting to stop the
7 Incident, he had complete power to do it in one of
8 two ways, either by refusing to find the money out of
9 his budget or by recalling these officers who were not
10 carrying out his instructions, and that he did neither,
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12 then there might be a "revolution" or "wholesale
13 indiscipline" and MINAMI "would be placed in a very
14 impossible position" and that "perhaps he thought
15 about it and did not press the question at the Cabinet
16 Council," looking at the question from the "practical
17 side" (T. 33,639-33,640). The Kwantung Army "had
18 already given assurance that there would be no ag-
19 gravation of war," and all that SHIDEHARA and MINAMI
20 did was to put the Governmental declaration of non-
21 expansion into effect "with less possible friction"
22 (T. 33,640).

24 Note: (4) In reply to the prosecutor's
25 question whether SHIDEHARA asked MINAMI why MINAMI
did not recall those subordinates who would not obey

1 his orders, SHIDEHARA testified that there were so
2 many subordinate officers in Manchuria and that MINAMI
3 "looked very much embarrassed" when such a suggestion
4 was made at a Cabinet council (T. 33,632-33,633).

5 9. The above testimony of SHIDEHARA, sug-
6 gesting as if MINAMI might have been afraid of a
7 revolution or wholesale indiscipline is not entirely
8 without foundation. According to KATAKURA's testimony,
9 on October 18th, a message came from Tokyo that the
10 Kwantung Army should not take action such as to become
11 independent of the Japanese Army at home. Similar
12 telegrams were received by various units in the field.
13 On investigation, however, there was nothing in the
14 Kwantung Army to substantiate such a suspicion. General
15 SHIRAKAWA came from Tokyo, fearing that something was
16 in the offing, but found out nothing (T. 18,950-18,852).

17 Note: (1) According to ISHIHARA's affidavit
18 (Ex. 3584), when the so-called October Incident took
19 place, it was suspected in Tokyo that the Kwantung
20 Army might declare independence and that troubles might
21 be caused in concert with the said Army. Telegrams
22 in violent tones were received, and General SHIRAKAWA
23 came to Manchuria to appease the Army. But the forces
24 in the field which were quietly striving to do their
25 duties could not help sneering at the confusion in the

central authorities (T. 22,117).

1 Note: (2) According to TANAKA's testimony,
2 he heard from CHO that, just after the October Incident,
3 opinion among the central military authorities was
4 not in favor of the Manchurian independence. Hence,
5 CHO let loose some rumors that the Kwantung Army was
6 intending to carry out a separatist movement and
7 declare its independence from Japan, if Japan proper
8 would continue to oppose the Kwantung Army. As a
9 result of this propaganda carried on by CHO, the
10 central authorities suddenly changed and began to lean
11 in favor of the Kwantung Army. But CHO said laughingly
12 that it was a plan hatched by himself and that no one
13 in the Kwantung Army had any idea about it. (T. 2,017).

15 Note: (3) According to ITAGAKI's affidavit
16 (Ex. 3316), at the end of October, HONJO disclosed to
17 his staff his views on the situation, comprising the
18 following propositions: (a) to wipe out the anti-
19 Japanese sentiment, (b) to give up Japan's rights and
20 interests, renounce her extraterritoriality and return
21 Port Arthur and Dairen to Manchuria (T. 30,269),
22 (c) to reject the return of Chang Hsueh-Liang and his
23 party (T. 30,270), (d) to make a clear distinction
24 between Pu-Yi's assumption as head of the new state
25 and the restoration of his imperial regime (T. 30,270-

1 30,271), (e) to leave all administrative matters to
2 the new state, the Kwantung Army limiting its action
3 to the maintenance of law and order (T. 30,272), and
4 (f) to quote: "So far, the Japanese government gave
5 us those prohibitive instructions only, such as pro-
6 hibiting us from participating in political and admin-
7 istrative matters, or instructing us to avoid restor-
8 ation of imperial regime, and no definite indication
9 as to the future policy of the Kwantung Army has been
10 shown by them. We presume it is only natural under
11 the circumstances. - - - we must make close observation
12 upon the future relation between Manchuria and Japan
13 in order to be able to report the true aspect of the
14 situation to the central government - - -" (T. 30,272-
15 30,273; KATAKURA, T. 18,981-18,983).

16 According to KATAKURA's testimony, views of
17 the Kwantung Army were frequently submitted to Tokyo
18 and there was a difference of opinion resulting there-
19 from. Public rumors were afloat that officers of the
20 Kwantung Army, entertaining very strong views, desired
21 to put HONJO under confinement or that they were dis-
22 patching messages to Tokyo by themselves without the
23 approval of senior officers. NINOMIYA, Vice Chief of
24 General Staff, came to investigate the matter, but
25 the situation was explained by HONJO himself (T. 18,986-

18,987).

1 This testimony will show a very difficult
2 situation which faced MINAMI in October and November
3 and which was aggravated by Pu-Yi's appearance in
4 Manchuria as described in the following paragraph.

5 10. On October 27th, HAYASHI reported that
6 according to Hsieh Cheh-Shih's talk, attempts of some
7 staff officers of the Kwantung Army to draw out Emperor
8 Hsuan Tung to Manchuria failed on account of the oppos-
9 ing advice given by KASHII (Commander of the Japanese
10 Garrison in Tientsin) to the Emperor and of the strict
11 watch kept by the Japanese police at the Emperor's
12 residence and that DOHIHARA was sent secretly to
13 Tientsin to execute the plan (T. 33,617-33,619). On
14 October 28th, HAYASHI reported that a prefectural
15 Autonomy Guidance Committee would be established under
16 the Local Autonomy Guidance Office, comprising Japanese
17 members, and that MIYAKE called a meeting of garrison
18 commanders and provost marshals to support this policy
19 (Ex. 3479 I, T. 33,627-33,630).

20 On November 1st, KUVASHIMA (Consul-General
21 at Tientsin) reported to SHIDEHARA that according to
22 Yao Chen, 6 Chinese representatives of the people of
23 the Three Eastern Provinces (i.e., Manchuria) arrived
24 at Tientsin a few days before to have a secret conference
25

1 with the Chinese group in Tientsin, and agreed upon
2 the autonomy of Manchuria under the leadership of
3 Tuan Chi-Juei (a famous elder statesman in China)
4 and that the representatives were apparently intend-
5 ing to carry out their plans with the consent of
6 HONJO, (Ex. 387, T. 4,360-4,361).

7 On the same day, November 1st, SHIDHARA
8 wired to KUNASHIMA to the following effect: (a) as
9 the Sino-Japanese negotiations were not progressing
10 smoothly, Japan would desire, for the time being,
11 the repletion of the organs for maintenance of public
12 order in various parts of Manchuria and the gradual
13 settling-down of the inner regions by means of such
14 organs; (b) but to form an independent State would
15 cause a great dispute by the United States and other
16 signatory Powers of the Nine Power Pact, the Central
17 Military also assenting to this point; (c) in any case,
18 to bring the Emperor out at this time would develop
19 into the most unfavorable situation for Japan, and
20 his restoration to the throne was a plan completely
21 anachronistic; (d) Liu Huan-Yeh who came from Mukden
22 to investigate opinions in Tokyo had met with strong
23 opposition; and to quote: (e) "Actually the War Minister
24 MINAMI has the intention to oppose the scheme and
25 Lieutenant-General SAKANISHI, it seems, had explained

1 to Liu that his scheme is anachronistic and has
2 requested prudence of the Emperor" (Ex. 286,
3 T. 4,355-4,359; language corrections at T. 36,164-
4 33,165).

5 THE PRESIDENT: This seems to be a convenient
6 break. We are starting a new section. We will adjourn
7 until half past nine tomorrow morning.

8 (Whereupon, at 1600, an adjournment
9 was taken until Wednesday, 17 March 1948, at
10 0930)

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